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No. 13281

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**United States  
Court of Appeals**  
for the Ninth Circuit.

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ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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**Transcript of Record**

In Nine Volumes

**Volume VI**  
(Pages 2301 to 2748)

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**Appeal from the United States District Court  
for the District of Nevada.**

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Phillips & Van Orden Co., 870 Brannon Street, San Francisco, Calif.

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2:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MINER

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Now, Mr. Miner, referring to plaintiff's Exhibits 162 and 162A for identification, I call your attention to the writing on the upper right-hand corner, where it is Exhibit 27, when was that placed there?

A. That was placed on these work papers in order to identify them, Exhibit 27.

Q. That is the transcript of the bank account?

A. That is correct.

Q. And when was the work done by you in connection with these [1905] documents?

A. The work was done by me during the month of March, 1951.

Mr. Campbell: These will be offered in evidence as government's Exhibits 162 and 162A.

Mr. Avakian: May we examine the witness on his voir dire before they are admitted?

The Court: Yes, sir.

Q. (By Mr. Avakian): Mr. Miner, you said you prepared these in March of 1951. Will you

(Testimony of Charles M. Miner.)

state when you made the examinations that are reflected in these two proposed exhibits?

A. Also during the month of March, 1951.

Q. All of your work was done during that month?

A. In connection with these papers submitted, yes.

Q. You do not recall over how long a period of time?

A. Not exactly; it was several weeks.

Q. Now you said in preparing those you used various materials which are in a paper carton, which I am showing to you, now entitled Exhibit 161 for identification, is that correct?

A. That is correct.

Q. And you also used Exhibit 27?

A. That is correct.

Q. Did you use any other paper in the preparation of those exhibits? A. Yes, I did.

Q. What other papers? Are they present in court here? Can [1906] you identify them for us?

A. No, I couldn't identify them. I made reference to working papers prepared by the revenue agent, in order to check my work.

Q. And by the revenue agent, whom do you mean? Do you know his name?

A. I do not know his name. The papers were handed to me as being prepared by the revenue agent.

Q. And those work papers are not in evidence here, as far as you know?

A. Not to my knowledge.

(Testimony of Charles M. Miner.)

Q. Now I notice that in this box that is identified as prosecution's Exhibit 161, there are a number of envelopes containing cancelled checks and bank statements, which are addressed Elmer Remmer or Harold H. Maundreil. Can you tell us where you obtained these records?

A. Those were given to me by my superior.

Q. And who is that? A. Mr. Ray Weaver.

Q. And he is present in the court room, is he?

A. Yes, he is.

Q. Do you know where he obtained them?

A. No, I do not.

Q. Is he the man who also gave you the work sheets that you mentioned, the revenue agent's work sheets?

A. Yes. [1907]

Q. Did he hand you or show you any other material which you used in the preparation of Exhibits 162 and 162A for identification?

A. Not that I recall.

Q. Now insofar as you used the records which are in the box marked for identification as Exhibit 161—and incidentally, that includes a number of check stub books in addition to bank statements and cancelled checks, does it not?

A. That it does.

Q. In connection with your use of those materials, did you know to what persons or businesses those relate?

A. I was told that they pertained to Tiny's or the Menlo Club operation.

Q. Mr. Weaver told you that?

(Testimony of Charles M. Miner.)

A. That is correct.

Q. Did Mr. Weaver also tell you that he had those records continuously, either in his possession or the possession of some other agents of the Bureau from the years 1946 and 1947?

Mr. Campbell: Objected to as incompetent and further ask that the jury be instructed to disregard the question and it calls for hearsay.

Mr. Avakian: I am asking him if Mr. Weaver didn't tell him.

The Court: It is hearsay.

Mr. Campbell: And it is immaterial. [1908]

Mr. Avakian: We are inquiring as to the source of materials.

The Court: He told you he got them from Mr. Weaver.

Mr. Avakian: That is right.

The Court: All right.

Mr. Avakian: The objection is sustained, your Honor?

The Court: Yes.

Q. Did Mr. Weaver also tell you that the representatives of Mr. Remmer had been trying to get permission to examine these documents themselves for preparation of the trial?

Mr. Campbell: That has already been sustained and I ask the jury be instructed to disregard it.

The Court: Objection is sustained; calls for hearsay.

Mr. Avakian: Now, your Honor, we object to these two exhibits for all the reasons heretofore set

(Testimony of Charles M. Miner.)

forth with respect to the use by the prosecution of documents which were taken and as to which we were denied permission to examine in advance of the trial, and we also object as to these two proposed exhibits on the additional grounds that they are based, in part at least, on materials which so far, at least, have not been presented in this court room and are not available for examination by us, and I believe your Honor is well aware of the rule that expert witnesses may present a summary under certain conditions, providing the materials used in preparing his summary are available for examination and inspection by the [1909] other side.

Mr. Campbell: That is not the state of the record. He stated these were materials. He was asked if he had them before him and he said he checked his work against the other agent's work for accuracy.

Mr. Avakian: He used them in preparing the exhibits and he compared them with other materials. We are entitled to have all the materials which entered into the summary he prepared so we may have an opportunity to look at them themselves.

Mr. Campbell: Are these summaries in any part the product of some revenue agent's you looked at?

A. No, sir.

Q. Are they entirely the product of exhibits shown to you or in that box marked for identification?

A. That is correct.

Q. (By Mr. Avakian): Before you completed



(Testimony of Charles M. Miner.)

these and turned them in to whoever you did as correct and complete, did you refer to certain work papers of another agent?      A. Yes, I did.

Mr. Avakian: I think that was part of the examination before he completed the exhibits as correct, and I submit we are entitled to see everything he saw or used before he reached the conclusion these were proper.

The Court: I want to know from this witness, Exhibits 162 and 162A are summary of all matters in 161? [1910] They do not purport to be or have anything to do with any other material?

A. That is correct, sir. The information contained came solely from Exhibit 161. I merely referred to revenue agent's work papers as a check against possible error.

The Court: All right. The objection is overruled. The exhibits are admitted in evidence, 162 and 162A.

Mr. Campbell: Reading from government's Exhibit 162: (Reads.) Less O. S. checks.

Q. What is meant by the symbol O/S?

A. It is an abbreviation for outstanding checks.

Mr. Campbell: (Reads from exhibit.)

Q. And you have attached hereto, have you not, a list of the checks which you found to be outstanding as of the conclusion of business December 31, 1945, but which have not yet been passed through the bank, is that correct?      A. That is correct.

Q. And in that connection you have separated

(Testimony of Charles M. Miner.)

those checks into regular checks and pay roll checks, have you not?      A. That is correct.

Q. And you have also listed the checks by numbers, by the date appearing on the check, and the amount of the check, is that correct?

A. That is correct.

Q. And it is a fact, is it not, that among those outstanding [1911] checks as shown by this exhibit you have taken into consideration checks which were drawn as early as December 18th.

Mr. Gillen: Counsel is testifying again. He is putting in his question everything he wants the witness to say yes or no to.

The Court: He is just summarizing.

Mr. Campbell: I am reading from the exhibit.

The Court: That might save time rather than reading the entire exhibit.

Mr. Gillen: I want to save time, Your Honor, but to me this is a cross-examination question—"it is a fact, is it not." It is certainly leading and suggestive.

The Court: Objection will be overruled.

Q. Included in the outstanding checks as of December 31, 1945, were checks issued as early as December 18, 1945, is that correct?

A. I believe so.

Q. And you have also followed those checks through to the cashing period by summary appearing on page 3?

Mr. Gillen: Objected to as leading and suggestive.

(Testimony of Charles M. Miner.)

The Court: Objection overruled.

Q. Is that right.

A. That is right.

Mr. Campbell: Reading from that summary:  
(Reads.)

Q. Total 9063.84—does that total represent all outstanding [1912] checks that were outstanding as of December 31, 1945?

Mr. Gillen: Objected to as leading and suggestive.

The Court: Objection overruled.

Q. Is that correct?

A. That is the total on outstanding checks.

Mr. Campbell: Reading from plaintiff's Exhibit 162A: (Reads.) To which there is attached a list following page of sheet No. 1 of checks, giving the check number, the date of the check, and the amount and classified as regular and as pay roll checks, totalling \$7963.51. The end of the exhibit is a summary of outstanding checks paid January, February, and June, total of \$7963.51.

You may cross-examine.

#### Cross-Examination

By Mr. Avakian:

Q. Mr. Miner, I notice that on Exhibit 162, the lower lefthand corner of each page there is a notation, "Miner 3-19-51." Will you explain the meaning of that?

(Testimony of Charles M. Miner.)

A. That is the date that I prepared the work sheet.

Q. Did you prepare this particular exhibit?

A. The particular work sheet which is marked there.

Q. When you say work sheet, do you mean Exhibit 162?

A. The date on each page is the date that I compiled the information.

Q. On that particular page?

A. On that particular page. [1913]

Q. In other words, it is the date that you wrote up the page itself?

A. It is the date that I compiled the information on that page.

Q. Well, did you make some entries on one day and some entries on another day?

A. It might be possible.

Q. And in that case the date represents what, the last day that you worked on that?

A. Yes.

Q. And I note that on Exhibit 162A there is in the lower left-hand corner of each page the notation, "Miner 3-20-51." Does that represent the last date on which you made entries on each of these sheets? A. May I see the exhibit, please?

Q. Yes, surely. I will hand them both to you.

A. That date represents the date this information was completed and assembled.

Q. By this information, you mean the data that is entered on the sheets?

(Testimony of Charles M. Miner.)

Mr. Campbell: Objected to as argumentative.

The Court: He may answer the question. Read the question please.

(Question read.)

Mr. Campbell: I do not understand the question—— [1914]

The Court: I do not see any necessity for the question.

Mr. Avakian: I am trying to find out when he was working on those.

The Court: Let him answer the question.

(Question read.)

Q. Do you understand the question?

Mr. Campbell: I submit it is incompetent.

Mr. Avakian: Let me restate it.

Q. Did you first prepare this material in some other form and then on a later date put it on the sheets that are in evidence here?

A. That may be with respect to one sheet there. The other sheets were made up on or about the dates as indicated.

Q. Each of these exhibits has three sheets in it, does it not?      A. That is correct.

Q. And the top sheet is sort of a summary sheet and the other two contain details?

A. That is correct.

Q. And what you mean then, I take it, is you mean you may have prepared the detailed sheets at an earlier time from the date on which you pre-

(Testimony of Charles M. Miner.)

pared the summary sheet, is that what you are getting at? I am trying to understand.

A. I mean the sheet which you are holding in your hand and which is of a different color than the other sheets, was actually written recently as a transcription of information [1915] which I did compile in March of 1951.

Q. And by sheet of a different color, you mean the first sheet in Exhibit 162A, is that right?

A. That is correct.

Q. If I understand you correctly then, the next two sheets contain details which were prepared on or about March 20, 1951? A. That is correct.

Q. But this top sheet, although it bears the date 3-20-51, was prepared at some later date?

A. The information was prepared on or about March, 1951; however was actually written recently.

Q. This particular page was written later?

A. That is correct.

Q. Is there a similar explanation with respect to summary sheet of 162?

A. No, there is not.

Q. All three of those sheets were written on or about March 20, 1951?

A. That is correct, with the exception noted here before, Exhibit 27, written in the upper right-hand corner.

Q. That was written in recently?

A. That is right.

Q. In preparing these two exhibits, did you examine all of the cancelled checks, bank statements,

(Testimony of Charles M. Miner.)

check stub books, that are contained in the box which is Exhibit 161 for identificaton [1916]

A. Yes, sir.

Q. And did you spend much time at that? How much time did you spend at it?

A. I can't remember the exact number of days, but it took me quite a while.

Q. Two or three weeks, is that correct?

A. Several weeks.

Q. Working continuously?

A. What do you mean by continuously?

Q. I mean were you working each day on this assignment, or did you take a few days to work on something else? A. I don't recall exactly.

Q. Do you recall whether you spent substantially all that time, two or three weeks' period doing this job?

A. Substantially all of the time.

Q. Now I note that on the second page of prosecution's Exhibit 162-A, which is designated as "Reconciliation" for December 31, 1946, there is a heading, "Checks dated in 1946, paid by bank in 1946." Would you explain what that means?

A. The statement is in error. It means that checks dated in 1946, which were paid by the bank in '47, as indicated by the specific date that they cleared the bank.

Q. So that when you wrote in there, "Paid by bank in 1946," that was a mistake? [1917]

A. That is correct.

Q. You meant to write 1947?

(Testimony of Charles M. Miner.)

A. That is correct.

Mr. Avakian: May we have the witness correct the exhibit in that respect?

The Court: Very well.

(Witness makes correction.)

Q. Now on the Summary Sheet 162-A there are three entries, the first of which is balance of a Bank Statement 12-3-46, amount of \$10,632.87. That, I take it, is the figure which is shown in the bank records as the amount of money in that account at the end of December 31, 1946?

A. That is correct.

Q. And then you have subtracted from that as outstanding checks the sum of \$7,963.51. That, I take it, represents the total of checks which were issued prior to the close of 1946, but which were not cleared through the bank until some time in 1947, is that correct? A. That is correct.

Q. And by that subtraction then you have adjusted the bank balance at the end of 1946, from \$10,632.87 down to \$2,669.36. That represents, then, the amount which you considered as the proper amount of that balance which should be considered in the net worth of a taxpayer whose income is being computed on the net worth basis? [1918]

Mr. Campbell: I object to the question in that form, calling for conclusion of this witness, as to what use may or may not be made of it. He has testified he adjusted the account for outstanding checks, the result representing the depositors' inter-



(Testimony of Charles M. Miner.)

est in those funds in the bank, and this question calls for his conclusion and is conclusion on legal matters.

The Court: Let me have the question.

(Question read.)

The Court: Objection sustained.

Q. How long have you been a special agent for the Bureau of Internal Revenue?

A. Since July 11, 1949.

Q. And prior to that time were you employed in any other branch of the Bureau?

A. No, I was not.

Q. How long have you been an accountant?

A. I have been doing accounting work since 1939.

Q. And prior to 1949, when you entered the Bureau, were you engaged in accounting work with a private accounting firm? A. No.

Q. For some corporation or business?

A. For the business of public accountant.

Q. In your own business? A. No. [1919]

Q. For a firm that was in public accounting business? A. Yes.

Q. In your work as an employee of a public accounting firm and in your work as special agent for the Bureau of Internal Revenue, have you engaged in computation of the net income of tax papers by what is known as the net worth method?

Mr. Campbell: Objected to as incompetent, not within the scope of direct examination.

The Court: Objection sustained.

(Testimony of Charles M. Miner.)

Mr. Avakian: May I be heard on that, your Honor?

The Court: No.

Q. Mr. Miner, in adjusting a balance shown on a bank statement by taking into account either checks outstanding or deposits outstanding at the end of the year, what effect does that have with relation to the computation of the dollar value of the bank account to the owner of the account?

Mr. Campbell: Objected to as calling for conclusion, not within the scope of direct examination.

Mr. Avakian: He was examined exactly on that point on direct.

The Court: Objection sustained.

Q. Referring to prosecution's Exhibit 162, which is your schedule as of December 31, 1945, I note that the first entry you have made is bank balance per bank statement of 12-31-45, of \$5,492.69. That represents, does it, the amount of that [1920] account shown on the records of the bank as of the close of business on December 31, 1945?

A. That is correct.

Q. Now your next entry is entitled "Add Deposit in Transit \$4,284.45." Will you explain that item to us?

A. That was a deposit to the account which was credited by the bank on January 2, 1946, and which was presumed to have been on the way to the bank as of December 31, 1945.

(Testimony of Charles M. Miner.)

Q. You say it was presumed—upon what do you base that assumption?

A. It was presumed because it was not likely, in view of the deposits being made, the money would have been made available as of the first day of January, one day's operations.

Q. You mean the second day of January—I think you testified it was credited on January 2nd?

A. It was deposited on January 2nd. It was credited by the bank on January 2nd.

Q. You say it was not likely to have represented income of January, or something to that effect. Upon what do you base that opinion and conclusion? Was that based on some record that you saw?

A. It was based upon the experience of the deposits in the account.

Q. Did you find some record which showed that that money was on hand on or about December 31, 1945? [1921]

A. No, I believe not.

Q. You simply found a record of a deposit made in the bank on January 2, 1946, is that correct?

A. That is correct.

Q. So far as you know, can you tell us where that money came from that was deposited on January 2, 1946?

A. No, I can't say where the money came from.

Q. Can you point to any record or any evidence which will show whether or not that money was on hand at the close of the year 1945?

A. Not definite evidence, no.

(Testimony of Charles M. Miner.)

Q. Don't limit yourself to definite. Is there any evidence you can point to in the record, or any evidence of any kind you can point to?

A. The only records are, as I explained before, the method of deposits as shown by the bank statement.

Q. Will you find that record for me?

A. May I see Exhibit 27?

Q. Have you found the record?

A. I have found the record, yes.

Q. Which exhibit are you looking at, so the record will be clear?      A. Exhibit No. 27.

Q. You are showing me what sheets?

A. The sheets are not numbered, but in the exhibit this is the sheet ending with the date of December 31, 1945, and the sheet [1922] for the first few days in January, 1946.

Q. Now the second sheet that you have shown me begins December 31, 1945, likewise, does it not?

A. It begins carrying balance forward from December 31, 1945.

Q. Now is there any particular entry on those two sheets which is evidence of the fact that the deposit of \$4,284.45 made on January 2, 1946, was on hand with the owners of the account prior to the close of 1945?

The Court: Read the question.

(Question read.)

Q. Do you understand the question?

A. There is no evidence but there may be an indication.

(Testimony of Charles M. Miner.)

Q. What is it that indicates that, please?

A. Deposit made on December 28, 1945, \$2,400; deposit made on December 31, 1945, of \$3,950, indicating that in what would be presumed to be normal operations, it would take two or three days to accumulate the sum of four thousand dollars to deposit.

Q. Now there was a deposit on December 31st, was there not?

A. That is correct.

Q. That is the last day of the year?

A. That is the date it was credited by the bank on the bank account, that is correct.

Q. That would be the date the money was deposited in the bank, is that right?

A. It is the date the bank credited it on its bank statement. [1923]

Q. Haven't you found, in examination of bank records, that the bank credits money in its records on the date it is deposited with the teller?

A. Not necessarily. It may be in the depository box and it would not be credited that day.

Q. You mean if a person deposits with the teller on a particular day the entry in the bank records may not be made on that day?

A. That is not what I mean.

Q. What do you mean?

A. I mean it is possible for money to be placed with the deposit bank in a depository in the bank, a sack dropped down the chute there, it might lay for a day or two until the bank opens up on the subsequent day.

(Testimony of Charles M. Miner.)

Q. Did you have any reason to believe that this deposit of December 31, 1945, was made in that manner?

A. No, I have no reason to believe so.

Q. Insofar as deposits at teller's cage are concerned, you know, do you not, that the bank credits those deposits on its records as of the day the money is handed to the teller? A. Usually.

Q. This deposit December 31, 1945, \$3,950.63, and the next deposit January 2, 1946, \$4,284.45, are those the two entries which lead you to believe that the four thousand dollar figure was on hand at the close of business December 31, 1945? [1924]

A. No, those are not the two figures, that led me to believe that.

Q. I thought they were the two you showed me. Are there some other figures which lead you to that conclusion?

A. As I stated before, it was deposit of \$2,466.68 on December 28th, coupled with deposit \$3,950.63 on December 31, 1945, which led me to believe that in the normal course of business the \$4,284.45 credited to the account on January 2, 1946, would have been accumulation over several days, therefore, would have been on hand at December 31, 1945.

Q. Well, you say would have been accumulation over period of several days, do you mean several days immediately prior to its deposit?

A. Several days prior to its deposit, yes.

Q. And January 1, 1946, would be one of those days, would it not?

(Testimony of Charles M. Miner.)

Mr. Campbell: I object to this as being argument. The subject has been covered and re-covered.

The Court: I think it is just a matter of examining the calendar to answer that question. Objection sustained.

Mr. Avakian: If this witness has simply made an assumption based on records——

The Court: There is nothing before the Court.

Q. Isn't it a fact, Mr. Miner, that your decision to list that January 2nd deposit as having been in transit on December [1925] 31st is based simply on your own opinion and conclusion and is not based on documentary evidence showing that that money was on hand on December 31, 1945?

A. That is correct.

Q. Are there any other entries in these two exhibits which are based on your own opinion and conclusion rather than being based specifically on documentary or other evidence?

A. May I examine the exhibits?

Q. Certainly.

A. The other information is all substantiated by documentary evidence.

Q. Now in addition to making adjustment on account of that \$4,284.45 item, you made a further adjustment with respect to checks in transit, did you not?

A. No, I do not believe I did.

Q. Then I will show you Exhibit 162, which states, "Amounts outstanding checks \$9,063.84."

A. I made adjustment on outstanding checks. It is a different terminology.

(Testimony of Charles M. Miner.)

Q. In other words, you are objecting to my term "in transit." And with those adjustments you arrived at a credit balance in that particular account for December 31, 1945, did you not?

A. Yes, I did.

Q. Now, Mr. Miner, in computing the income of a taxpayer on net worth basis, is it essential from an accounting point of view, [1926] in order to make a correct determination of the net income, to have a correct figure for the bank account of the depositor whose net income you are determining?

Mr. Campbell: Objected to as calling for conclusion, not within the scope of direct.

The Court: Objection sustained.

Mr. Avakian: I would like to be heard on that because that is the issue in this case. Mr. Pike has stated that they are determining on net worth income.

The Court: No, I won't take the time. The ruling will stand.

Q. Mr. Miner, if you are mistaken in your opinion and conclusion that the January 2, 1946, deposit was actually on hand with the depositor prior to the close of business in the year 1945, would that have an effect in the determination of the net income of the depositor for both the year 1945 and the year 1946?

Mr. Campbell: Objected to, not within the scope of direct examination; calling for his opinion and conclusion as well.

The Court: Objection sustained.



(Testimony of Charles M. Miner.)

Q. In preparing the two exhibits, 162 and 162A, and in making the examination which you made for that purpose, were you aware of the fact that the Menlo Club, Menlo Bar and Tiny's Restaurant were open 24 hours a day every day of the year?

Mr. Campbell: Objected to as immaterial. [1927]

The Court: He may answer the question.

Q. With the exception of the bar. I will reframe the question. Were you aware of the fact, in making that examination, that Tiny's Restaurant and the Menlo Club were open 24 hours a day, every day of the year, and the Menlo Bar was open every day of the year except between the hours of 2:00 a.m. and 8:00 a.m.?

A. No, I wasn't aware of that.

Q. And when you concluded that a deposit made on January 2nd in a large amount, such as \$4,284.45, when you concluded that must represent money on hand prior to the close of business on December 31st, you were assuming, were you not, that these businesses were not open on the holiday of January 1st?

A. No, I wasn't particularly assuming that.

Q. Were you assuming anything either way on that, as to whether they were open or not?

A. No, sir.

Q. You didn't consider it either way; is that right?

A. I made no assumption of it.

Q. Did you take into consideration the fact that the business of such places might be abnormally

(Testimony of Charles M. Miner.)

high on New Year's Eve and on the early hours of January 1st of the year?

A. I didn't consider that.

Q. Now if you are in error in your assumption that this \$4,284.45 deposit of January 2nd was on hand on December 31st [1928] would that change the amount of the credit balance on the books of December 31, 1945, which you show on Exhibit 162?

Mr. Campbell: Objected to; the document speaks for itself. The question is argumentative, if the Court please.

The Court: Objection sustained.

Q. So there will be no misunderstanding, Mr. Miner, you arrived at the credit balance figure shown on prosecution's Exhibit 162, of \$713.30, on the assumption that the deposit of January 2nd was actually on hand on December 31st; is that correct?

A. That is correct.

Mr. Avakian: No further questions.

### Redirect Examination

By Mr. Campbell:

Q. I have one question with relation to this amount which you have shown as deposit in transit, \$4,284.45. I wonder if you will make a computation for me from this exhibit. Assuming that that money was not on hand or in transit as of December 31st, what would be the amount of checks drawn and outstanding as of December 31st, for which there were no funds on hand in the bank or in transit?

(Testimony of Charles M. Miner.)

Give me the round figure—you don't have to figure it to the cent.

Mr. Gillen: If there is a computation made, I think it should be to the cent.

Mr. Campbell: Very well, you can have it to the cent.

A. The bank account would have been overdrawn in the amount of [1929] \$3,571.15.

Q. So that if the deposit of January 2nd was not in transit, there would be outstanding as of December 31st, as shown by the schedules of checks drawn for general purposes and pay roll checks to that amount; is that correct?

A. That is correct.

Mr. Campbell: That is all.

#### Recross-Examination

By Mr. Avakian:

Q. That would be true, Mr. Miner, only if all checks in transit were actually presented to the bank on January 2nd prior to the four thousand dollars; is that true?

A. I do not believe that is.

Q. The bank balance would not be overdrawn until the checks would be presented to the owner, would it?

Mr. Campbell: That was not my question. Object to the question.

The Court: You may answer the question.

Mr. Avakian: He said the account would be overdrawn.

(Testimony of Charles M. Miner.)

The Court: It is obvious——

Mr. Avakian: He won't admit an obvious thing, that is the point, your Honor.

Mr. Campbell: I object to that.

The Court: Go ahead and answer the question. I do not see any reason why you should ask such a question.

(Question read.) [1930]

A. Yes, the bank account would be overdrawn. The account is considered overdrawn when the checks are issued in excess of the amount of funds to pay those checks, whether or not such checks are presented to the bank for payment.

Q. Actually, Mr. Miner, the checks you have listed as outstanding at the end of the year in total amount of \$9063.84, were presented—those particular checks were cleared through this bank account in part during the month of January, 1946—they were all presented at various times during the month of January, 1946; isn't that correct?

Q. I would have to refer to the exhibit, please, before I could answer the question. No, these outstanding checks were not all presented to the Crocker First National Bank for payment in the month of January, 1946.

Q. Are there other months also?

A. Yes, sir; during the months of January, February, March and April of 1946.

Q. So when you say that if that money, \$4284.45, had not been on hand on December 31st, the account would have been overdrawn, you mean

(Testimony of Charles M. Miner.)

simply, do you not, that the total of checks issued as of December 31, 1945, was greater in amount than the money which was in the bank on December 31, 1945?      A. That's right.

Q. So that you would consider that the bank account was overdrawn then; is that correct? [1931]

A. Yes.

Q. And the bank account would have been overdrawn on your theory, whether the four thousand dollars was on hand or not, so long as it had not been put in the bank; isn't that correct?

A. It would not be considered overdrawn if the money were in transit to the bank.

Q. What do you mean by in transit?

A. Had been mailed or placed in the bank to deposit.

Q. But if it were simply in the office or office safe, then you would consider that the account would be overdrawn?

A. Not if it was in the safe of the bank.

Q. Not on the way to the bank but in the office safe?

A. In the office safe, to be deposited in the bank—

Q. Would you answer the question—if the money was simply in the office safe and nobody carried it to the bank and checks are drawn in a total amount more than money in the bank, you, as an accountant, would consider that overdrawn?

A. It would depend upon the circumstances.

Q. Do you know whether these checks which

(Testimony of Charles M. Miner.)

you have listed as outstanding checks, had been delivered to the payees on December 31st or not?

A. I have no way of knowing that.

Q. In preparing this exhibit you assumed, did you not, that the checks had been delivered to the payees?

A. I assumed that the checks had been [1932] issued.

Q. By issued, you mean handed over to the payee?

A. No, I do not mean necessarily handed in the hand.

Q. What do you mean?

A. The check was written.

Q. It was written?

A. And on its way in some stage or other of going to the payee.

Q. In transit to the payee; is that right?

A. Yes.

Q. And you assumed that the checks were at least in transit to the payee or had been delivered to the payee in preparing this exhibit; is that correct?

A. I assumed that the checks were in transit to the payee.

Q. And if you are incorrect in that assumption, then your exhibit would likewise be in error?

Mr. Campbell: Objected to as argumentative.

The Court: Objection sustained.

(Jury and alternate jurors admonished and recess taken at 3:00 o'clock.)

3:10 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

Mr. Avakian: No further questions.

(Witness excused.) [1933]

## MR. HARKNESS

having been previously sworn, testified as follows,  
on behalf of the plaintiff:

## Direct Examination

By Mr. Campbell:

Q. Mr. Harkness, you have been previously sworn? A. Yes, sir.

Q. Will you state again your occupation?

A. Internal Revenue agent.

Q. How long have you been an Internal Revenue agent? A. Since 1945.

Q. What was your occupation prior to that?

A. I was an accountant with the Navy Department five years prior to that.

Q. And prior to your government employment, were you in accounting work? A. Yes, sir.

Q. And with whom and over what period of time?

A. With a private corporation in southern California.

Q. What is the name of the firm?

A. The Sun, San Bernardino.

(Testimony of Lynn Harkness.)

Q. What was that company?

A. Newspaper.

Q. You say you have been an Internal Revenue agent since when?      A. 1945.

Q. Now in connection with your duties as revenue agent—and I believe you so testified yesterday or the day before—that you [1934] were assigned, together with other agents, to the investigation involving the income tax returns of Elmer Remmer and his wife, Helen Remmer?      A. Yes, sir.

Q. Now in that connection did you examine such books and records of the 110 Eddy Street that were made available for your examination?

A. Yes, sir.

Q. And did you also examine the partnership returns as filed by the 110 Eddy Street Club?

A. Yes, sir.

Q. Mr. Harkness, I am going to show you plaintiff's Exhibit 112, consisting of two ledgers of 110 Eddy, and ask you if you examined these records in the course of your investigation?

A. Yes, sir.

Q. And I am also going to show you plaintiff's Exhibits 80, 81, 82 and 83, being partnership returns of income for the 110 Eddy Street, as it is referred to on one of the returns, for the years 1943, 1944, 1945 and 1946, respectively, and ask you if in connection with your examination you also examined those documents?      A. Yes, sir.

Q. Now I will ask you as to whether or not, on my instructions, if you have drawn up a schedule



(Testimony of Lynn Harkness.)

or summary of the assets and liabilities of the 110 Eddy Street for the dates of December 31, [1935] 1943; December 31, 1944; December 31, 1945, and December 31, 1946, based upon the books and the returns which I have shown you? A. Yes, sir.

Q. And I will ask you if, in connection with such summary of assets and liabilities, you have also, pursuant to my instructions, set forth on that schedule the capital accounts as shown by the books as of the same dates? A. Yes, sir.

Mr. Campbell: I will ask to have this schedule, consisting of three pages, marked 163 for identification. For further identification, I would like to ask another question.

Q. Showing you Exhibit 163 for identification, is this the summary of assets and liabilities, together with the capital accounts, as shown by the books, which you prepared and from the sources which I have indicated? A. Yes, sir.

Q. And I call your attention to the schedules annexed, Schedules 1 and 2, and were they prepared from the same sources? A. Yes, sir.

Mr. Gillen: There is no copy of this and it will take some little time to examine and we will meet your Honor's pleasure.

Mr. Campbell: Then may I make this suggestion—I have another similar schedule which I will also submit to counsel.

The Court: Do you want it marked as an exhibit for [1936] identification?

Mr. Avakian: I do not know whether this is a

(Testimony of Lynn Harkness.)

practical suggestion or not—if Mr. Campbell has other matters he could question the witness on without the use of these various documents, we could examine them perhaps overnight on some mutually satisfactory arrangement.

Mr. Campbell: We have similar schedules on the Day-Night Cigar Store and Menlo Club and I will have them marked for identification at this time so counsel may examine all three, which will expedite the procedure tomorrow morning. I am going to ask to have the statement of two schedules in the case which refers to the Day-Night Cigar Store marked 164 for identification, and those marked Menlo Club, consisting of two pages, be marked 165 for identification. If counsel wishes to withdraw them for photostating and keep them overnight, we have no objection. Let me make this suggestion, that you take a transcript of the first one before you leave this afternoon and the other two you can take overnight and have photostats.

Mr. Gillen: If you are going to trust us with one, why don't you trust us with all?

Mr. Campbell: No, I wish to work with the first one.

The Court: Exhibits 164 and 165, by consent of counsel, may be released to counsel for the defendant.

(Jury and alternate jurors admonished and recess taken at 3:35 p.m.) [1937]

Thursday, January 10, 1952—10:30 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

Mr. Avakian: May the record show, your Honor, that I have returned to the clerk this morning Exhibits 164 and 165 for identification?

The Court: Yes, sir.

MR. HARKNESS

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Harkness, yesterday I asked you as to certain exhibits which you had seen with reference to the summary which you stated you prepared and which was marked 163 for identification. You were shown, I believe, Exhibit 112 and also the returns of 110 Eddy Street, being Exhibits 80, 81, 82 and 83, and I will ask you also if, in connection with your preparation of the summary you also used Exhibit 112A, which is a further ledger of 110 Eddy Street?

The Court: When you refer to summary, which exhibit do you refer to?

Mr. Campbell: I refer to 163 for identification.

A. Yes, sir; I did.

Q. Now I hand you 163 for identification, which is the summary you have identified as having prepared in respect to 110 Eddy Street. Now let me

(Testimony of Lynn Harkness.)

ask you this, Mr. Harkness, with respect [1938] to the ledgers to which I have referred, Exhibits 112 and 112A, will you state whether or not, as you examined them, whether you found if they were posted up to and including the 31st day of December, 1946?

A. No, sir; the general ledger was posted up to and including October 31, 1945. The profit and loss accounts were brought up to date, I imagine to prepare the income tax return.

Q. Now will you state what you found to be the situation with regard to the inventory account in this regard?

A. The inventory account in the ledger was missing until sometime in 1945.

Q. By missing do you mean there were no entries you found in the record?

A. No, there was no sheet in the record until that time.

Q. Will you state whether or not the books are adequate for the purpose of drawing a trial balance?

A. No, sir; they were not.

Q. Now as I understand from your testimony, the summary which you drew was drawn from the records which you have indicated; is that correct?

A. In most cases.

Q. Well, what exceptions are there to that?

A. Well, the inventory, the figures are the figures taken from returns.

Q. Are you referring to the returns that were shown to you [1939] and the records?

(Testimony of Lynn Harkness.)

A. Yes, that is right.

Q. And by returns you are referring to the partnership returns of 110 Eddy Street; is that correct?

A. Yes.

Q. Now in this summary I will ask you if you indicated as to each of the items of assets and liabilities which you have set forth here and as to the capital accounts as shown on the books, the sources from which you drew the figures?

A. Yes, sir.

Q. In that connection I call your attention to the third item on this schedule, in which you list Exhibit 112 and work papers. Will you state to what work papers you have referred?

A. Well, that would be work papers in regard to the cash receipts and disbursements for 1946, in which was shown that no charge was made during the year 1946 in that account.

Q. And the receipts and disbursements account to which you refer is a portion of government's Exhibits 112 and 112A; is that correct?

A. Yes, sir.

Q. And when you refer to work papers, do you refer to any records outside of those to which your attention has been directed; namely, Exhibits 112, 112A, and 80 to 83, inclusive?

A. No, sir.

Mr. Campbell: This will be offered in evidence as [1940] government's Exhibit 163.

Mr. Avakian: Your Honor, I am not entirely clear as to just where the work papers are. Are they in evidence here?

(Testimony of Lynn Harkness.)

Q. Do you have the work papers?

A. I have a summary of the cash receipts and disbursements.

Q. Taken from these records?

A. Taken from Exhibit 112.

Mr. Avakian: May I inquire, your Honor, whether they are his work or somebody else's?

A. They are my work papers.

Q. (By Mr. Avakian): You made up those?

A. Yes.

Q. Were those work papers used by you in preparing Exhibit 163?

A. They were referred to in preparing the exhibit.

Mr. Avakian: Your Honor, I think those likewise should be produced for our examination. I do not believe those are in evidence or marked or presented here. Is that right, counsel?

Q. (By Mr. Campbell): Those work papers purport to be summary of what?

A. Of cash receipts and disbursements for 1946.

Q. Do you have them here in the courtroom?

A. Yes, I think so.

Q. Will you produce them? Are these the work papers which you prepared?

A. Yes, sir. [1941]

Q. You have handed me two sheets, both headed "110 Eddy Street," one of which is headed "Summary of Check Disbursements Year 1946," and the other headed "Analysis of Cash Receipts and Disbursements Year 1946." I will ask you if the figures

(Testimony of Lynn Harkness.)

hereon were taken from the records here in evidence?      A. Yes, sir.

Mr. Campbell: May these be stapled together? May these be marked 163A for identification?

Q. As I understand from your testimony, in compiling 163 for identification you also referred to these summaries which you drew from the book, which summaries were used in finding the net figure as set forth in your summary 163 for identification; is that correct?      A. Yes, sir.

Mr. Avakian: I understand from Mr. Campbell, your Honor, that he is simply marking the work sheets for identification and is not going to offer them at this time.

The Court: I am sure I can't tell what his plan is.

Mr. Campbell: I plan to defer the offer of that exhibit until counsel has an opportunity to examine them.

The Court: Very well.

Mr. Campbell: At this time I will renew my offer of 163 for identification.

Mr. Avakian: Now, your Honor, in view of the fact that the rule varies in different jurisdictions regarding the extent [1942] to which an expert witness may make summary, I am going to make an objection to ascertain the rule in this jurisdiction, and in making the objection I want to state frankly to your Honor that I think it is a proper order of procedure, but some courts do not agree with that, so simply for that purpose of getting a

(Testimony of Lynn Harkness.)

ruling from the Court, I make the objection that a summary of this kind represents the opinion and conclusions of the witness and is hearsay and is not the best evidence. I simply request your Honor's ruling on that point for my guidance.

The Court: The exhibit will be admitted in evidence.

Q. Mr. Harkness, let me ask you, are the figures which you have set forth here drawn exclusively from records to which you have referred, or do any of them represent your opinion or conclusions?

A. They are drawn from the records.

Q. I am going to hand you Exhibit 163 and ask you to state what the records you examined disclosed to be the net worth of 110 Eddy Street as of December 31, 1943?

A. \$36,074.19.

Q. And what did such records disclose to be the net worth of 110 Eddy Street as of December 31, 1944?

A. \$39,998.52.

Q. And what was disclosed as the net worth of 110 Eddy Street as of December 31, 1945?

A. \$44,321.40. [1943]

Q. And as of December 31, 1946?

A. \$33,210.35.

Q. Now you have listed on that summary the assets and liabilities as of each of those year-ending dates, 1943 to 1946, inclusive, have you not?

A. Yes, sir.

Q. Now as to the balance in bank accounts, from what sources did you draw those figures?



(Testimony of Lynn Harkness.)

A. I used the book figures, the figures in the general ledger.

Q. And to what exhibit do you refer?

A. Exhibit 112.

Q. Now as to the cash fund, from what source did you ascertain those figures?

A. For the years 1943, 1944 and 1945 the book figures. 1946 the same figure was used as for 1945 because it was ascertained there were no changes during the year affecting that balance of receipts and disbursements.

Q. Was there any book figure as of the end of 1946 for the cash balance?      A. No, sir.

Q. So I take it that you analyzed cash receipts and disbursements for the purpose of ascertaining if any entries had been made in cash receipts and disbursements which would have affected the balance of that; is that correct?

A. That is correct. [1944]

Q. It was on that basis that you used the same figure at the end of 1946 as at the end of 1945?

A. Yes, sir.

Q. As shown by the books at the end of 1945?

A. Yes, sir.

Q. Now as to prepaid insurance and prepaid taxes, as set forth in the summary, from what records did you draw those figures?

A. Those figures were taken from the books, Exhibit 112.

Q. Now as to the inventory, which is shown as being on hand at the end of each of the calendar

(Testimony of Lynn Harkness.)

years 1943 to 1946, inclusive, from what source did you obtain that figure?

A. Those figures were obtained from the partnership return of 110 Eddy Street, Exhibits 80 to 83.

Q. In other words, they were figures set forth as partnership return of income of 110 Eddy Street?

A. Yes, sir.

Q. I believe you stated that you found no inventory record among the records which you examined; is that correct?

A. Except for a portion of the year 1945.

Q. And did that include the year-end inventory?

A. I can't recall without seeing the general ledger.

Q. Will you refer to that?

A. The first entry in this account is February 28, 1945. It is carried down through November, 1945, and then there are [1945] pencil figures bringing it down to the end of the year.

Q. And does the pencil figure coincide with the inventory figure as used in the return?

A. No, it is slightly less.

Q. And you used the inventory figure that was set forth in the return?

A. Yes, sir.

Q. You say slightly less; it is a matter of just a few dollars?

A. No, it is about \$1600 less. I beg your pardon—1945 figure is exactly the same as shown. I was looking at 1946.

Q. Now as to 1946, did you use the figure shown in the return?

A. Yes, sir.

(Testimony of Lynn Harkness.)

Q. Did the figures reflect inventory at the end of 1946?      A. No, sir.

Q. Now as to furniture and fixtures as set forth in your summary, from what source did you obtain those figures?

A. 1943 the books and return agree.

Q. And that was the source of the figure?

A. Yes. 1944 the book figures were used in 1944 and also 1945.

Q. Yes?

A. 1946 the figure was used that was shown on the return.

Q. Was any figure shown in the books for 1946?

A. No, sir. [1946]

Q. So you used the figure as established in the return, income tax return of 110 Eddy Street?

A. That is right.

Q. In the absence of any book figure?

A. That's right.

Q. Now as to the liquor license, the final item of assets, what was the source of that figure?

A. 1943, 1944 and 1945 figure was used as shown on the books. 1946 the same amount was used, one thousand dollars. Cash receipts and disbursements showed no change in that figure for the year.

Q. Was there any figure on the books as the end of 1946 for liquor license?      A. No, sir.

Q. And the liquor license was carried for the first three years then as shown on the books?

A. Yes, sir.

Q. And there was no change as to any of those

(Testimony of Lynn Harkness.)

years of the amount of one thousand dollars; is that correct?      A. No, sir.

Q. Now as to liabilities of 110 Eddy Street, the first item is accounts payable; from what source did you obtain that?

A. That was obtained from the books, Exhibit 112.

Q. And as to the accrued sales tax?

A. From the same source. [1947]

Q. Pay roll taxes?

A. Also the same source.

Q. And accrued expenses?

A. That was also the same source.

Q. By the same source, do you refer to the books in each instance?      A. Yes, Exhibit 112.

Q. An item for reservation for depreciation, from what source did you obtain that?

A. That was taken from the books and also the partnership returns filed for 110 Eddy, Exhibit 112 and also Exhibits 82 and 83.

Q. Did the books and returns coincide on the reserve?      A. I will have to check that.

Q. Would you do that?      A. 1943—

Q. When you say 1943, you are referring to December 31?

A. That's right; 1943 I used the book figure, \$1637.

Q. Is that the same as found on the return?

A. You have to take into consideration what had been claimed prior to 1943 to get the amount of the total reserve.

(Testimony of Lynn Harkness.)

Q. I understand what you mean; in other words, a smaller figure would be used on the return for the year, but you used the accumulated figure?

A. Up to 1943. 1944 I used the book figure, \$2459. End of [1948] 1945 the book figures are used, \$3341, and then to arrive at the depreciation reserve for 1946 I added to the \$3341 the amount claimed on the 1946 return of \$1020.

Q. Did the books disclose any reserve for depreciation set up for 1946?      A. No, sir.

Q. Now I had asked you also to set up on this summary what the books disclose—that is, Exhibits 112 and 112A—as capital accounts appearing in the books. Is that the schedule which immediately follows that of “Assets and Liabilities”?

A. Yes, sir.

Q. Now will you refer to the books and state what, if anything, the books disclose as to any capital account of Arthur Pratt?

A. There is a liability account set up on March 1, 1944.

Q. Is that capital account?

A. It is in the section general ledger under “Personal.” However, it appears to be more like accounts payable account. It is closed out within the same year; set up March 1, 1944, and closed out December 31, 1944.

Q. What items appear in that account?

A. The original entry March 1, 1944, is entry originating in check disbursements of \$3400, showing a debit balance of \$3400. Then at the end of

(Testimony of Lynn Harkness.)

December 31, 1944, there is another entry originating in journal of \$3400, with notation "From 1943 profit," closing the account up. [1949]

Q. Now have you examined in the records the entries to which are reference first the debit as of March 1, 1944, debit of \$3400, and the reference to check record in 1945? A. I have the first one.

Q. Yes?

A. Which was from check disbursements page 45, check No. 532.

Q. And how is it issued?

A. It is issued to cash and then after the word "Cash" is Mr. A. R. Pratt.

Q. What is the date? A. March 1, 1944.

Q. Yes?

A. And it is carried over charged under general ledger, with no detail, \$3400.

Q. Have you also referred to the journal entry, whereby a credit of \$3400 is made to the account, credit Artur R. Pratt as of December 31, 1944, capital item 1943 profits, and the journal reference J-17?

A. I do not find the journal entries in either one of these books.

Q. Did you find the journal entries at the time you examined the books? A. I do not recall.

Q. You find no journal entries in these books?

A. Not in these books—pardon me—I find the journal—— [1950]

Q. You do find it?

Mr. Avakian: Your Honor, I understand that was in the front part of the book.

(Testimony of Lynn Harkness.)

A. I find it. Journal entry December 31, 1944, debit to profit and loss \$3400 and credit Arthur R. Pratt \$3400.

Q. Did you find anywhere in those books any reference to an initial investment by Mr. Pratt of the sum of \$3400?

A. I did not find it in the books.

Q. And did you find, or do you find, anywhere in that book any record of a disbursement to Arthur Pratt of \$6800 by way of return of capital or purchase of his interest or distribution of profits, or a combination of any of the three?

A. I believe the \$3400 is the only item.

Q. That is the only item you find in there?

A. Yes, sir.

Q. Now in those books, in the distribution of the profits, for the year 1944, distribution of any portion of it, do you find that any portion of the profits were distributed to Arthur R. Pratt?

A. No, sir.

Q. Are the entries with regard to Arthur R. Pratt the only entries which you recall finding wherein he is mentioned?

A. Yes, sir.

Q. Now there are attached to this exhibit, plaintiff's 163, two schedules, Schedules 1 and 2. Will you state what they are? [1951]

A. Schedule 1 explains how the book fund in bank account was arrived at at the end of 1945. The books were not posted subsequent to October 31, 1945, so I took the balance showing in the general ledger as of that date and added the deposits

(Testimony of Lynn Harkness.)

as shown in cash receipts books, Exhibit 112, and deducted the check disbursements for the last two months as shown in the same exhibit, arriving at the bank balance for the books for the year of 1945, which is \$6141.46.

Q. For that particular account? A. Yes.

Q. In relation to the other bank accounts, which is Schedule 2, do you have the same information?

A. Yes, the same. Arriving at the book balance the end of 1946.

Q. In other words, one schedule refers to end of 1945 and the other to the end of 1946; is that correct? A. Yes.

Mr. Campbell: You may cross-examine.

**Cross-Examination**

By Mr. Avakian:

Q. You have Exhibit 163 before you, Mr. Harkness? A. Yes, sir.

Q. I believe you stated in connection with the item, "Furniture and Fixtures," that at the end of 1945 you used the figure \$13,496.39 as a figure which you found in the books? A. Yes. [1952]

Q. And then you stated that at the end of 1946 you did not find any entry in the books as of that date for furniture and fixtures account; is that right? A. That is right.

Q. Accordingly you went to the 1946 return, which showed a figure of \$10,200; is that correct?

A. That is right.



(Testimony of Lynn Harkness.)

Q. Do you find in any of these books an entry as of January 1, 1946, for furniture and fixtures?

A. I do not recall that I did.

Q. I call your attention to Exhibit 112A, the page, "Furniture and Fixtures, Equipment and Buildings," and under date January 1, 1946, there is amount of \$13,496.39. Had you noted that entry on that particular page of Exhibit 112A?

A. Possibly I did; I don't recall.

Q. Now there are no other entries on that page subsequent to January 1, 1946?

A. That's right; same balance at the end of each.

Q. And that would indicate, would it not, to you as an accountant, that there were no changes in that account during the year?

A. Well, possibly so, with the general ledger set-up of the books.

Q. I refer you to the partnership return of 110 Eddy Street for the year 1946, which I believe is Exhibit 83; do you have [1953] that before you?

A. Yes.

Q. By referring to schedules, the balance sheet, do you note that that likewise shows no change in the account of depreciable assets from the beginning to the end of the year 1946?

A. That's right.

Q. Would that likewise indicate to you that there was no change during the year in that account?

A. Yes, that's right.

Q. By using the figure of \$10,200 at the end of 1946 instead of the figure \$13,496.39 that is entered as the only entry on the furniture and equipment

(Testimony of Lynn Harkness.)

page, Exhibit 112A, you actually reduce the net worth by the difference between those figures, do you not?      A. Yes, sir.

Q. To that extent you might say that is in favor of the taxpayer?      A. Yes, sir.

Q. But would you not say, Mr. Harkness, that correct accounting, in view of the absence of any further entries in the book during the year 1946, would you say correct accounting would call for the use of the bigger figure of \$13,496.39?

A. That is right, if it was determined definitely there were no additions during the year.

Q. So that to that extent on that particular item, Exhibit 163 [1954] may be incorrect?

A. It could be. As I say, as to a double entry system of books—

Q. Exhibit 112A that you have before you in the red cover is not a double entry system of books, is it?      A. No, sir.

Q. That is a commercially prepared form known as the Ideal System, is it not? Look at the printing on the pages in the book.

Mr. Campbell: You are referring to the book itself and not the entries?

Mr. Avakian: I am referring to the characterization which the publisher gives to it. I do not mean it is an ideal set of books.

Mr. Campbell: What I want to know is whether you are asking whether the entries were made pursuant to an ideal system or ideal set-up of the publisher, or whether that is simply a book which is

(Testimony of Lynn Harkness.)

denominated "Ideal" book? The question is confusing in that regard.

Mr. Avakian: Let me reframe the question.

Q. You have, Mr. Harkness, in the course of making audits of various taxpayers, you have frequently encountered the use of a book published by some publisher, as the one published there, have you not? A. I do not recall.

Q. Do you note in that book in the printing the name of a [1955] publisher of the book or the name given to the book?

A. There is a notation called the "Ideal System."

Q. That is in printing, is it not? A. Yes.

Q. Not in typewriting, but in printing?

A. Printing in the book.

Q. Now I do not see in Exhibit 163 any item of prepaid rent. Did you find any such item in the books? A. For which year?

Q. Well, for any of these years that you set forth in your summary?

A. I don't recall seeing any in the books.

Q. I call your attention to the prosecution's Exhibit 112 and to the page which is entitled "Prepaid Rent," and I call your attention to the various entries, approximately eight or ten in number, made on that page. Will you look at that and tell us whether you noted that page in your work in the preparation of this exhibit?

A. Yes, I recall that now.

(Testimony of Lynn Harkness.)

Q. But you did not set it forth in the preparation of Exhibit 163? A. No.

Mr. Campbell: Just a moment—I object to that as misleading. The record speaks for itself. There is no year-end prepaid rent there.

(Question and answer read.) [1956]

The Court: He may answer the question.

Q. What is the answer?

A. I don't have the question exactly in mind.

(Last question read.)

A. No, sir.

Q. I call your attention to the item of liquor license as set forth in Exhibit 163 and the reference to the source as Exhibit 112. Would you turn to the page in Exhibit 112 which shows the amount of that asset as of December 31, 1946?

A. The only entry I find is in the general ledger for liquor license, \$1000, as set up on December 31, 1942.

Q. December 31, 1942? A. Yes.

Q. You find no entries for the years ending December 31, 1943, 1944, 1945 and 1946?

A. Same balance, only one entry.

Q. There being no further entries, you then concluded the same amount would be carried forward? A. Yes, that is right.

Q. Now, with respect to the item of "Cash Fund," you have the amount of \$1400 at the end of 1946, and then a footnote in Exhibit 163 which

(Testimony of Lynn Harkness.)

states that the general ledger for 1946 receipts and disbursements show no change affecting this account during 1946. When you say "No general ledger for 1946," you mean there is no entry in the general ledger as to that item? [1957]

A. I mean there is no general ledger as such for 1946. It is single entry.

Q. It is a single entry system of books?

A. Yes.

Q. And in a single entry system no journal ledger is kept? A. That is right.

Q. Did you refer to Exhibit 83, the 1946 tax return, to see whether there was any entry there as to the amount of cash on hand at the end of the year 1946? A. Exhibit 83 shows cash of \$100.

Q. And you show \$1400 in your Exhibit 163, is that correct?

A. That's right. Of course, cash shown on the balance sheet in the partnership return should also show in the bank account.

Q. Do you know whether it did or not?

A. I do not.

Q. If you had used the figure of \$100 instead of the figure of \$1400, the net worth at the end of 1946 would be reduced by the difference between those two figures, would it not?

A. That is true, if they were correct.

Q. Now, you said that you determined, through analysis of receipts and disbursements, that there was no change in that cash fund during the year 1946. Is it your understanding that this cash fund

(Testimony of Lynn Harkness.)

was currency and silver kept on the premises for use from day to day in the business?

A. That's right. [1958]

Q. And it is possible, is it not, that that money could have been distributed in cash to the partners without showing up in cash receipts and disbursements analysis that you made?

A. Not if it was properly handled accounting-wise; it would have to show some place.

Q. You mean if all proper entries were made in the books?

A. That is right, either through journal entry or through cash disbursements.

Q. But you have already determined the bookkeepers keeping the books on these premises frequently did not make all the correct entries which they should make?

A. That's right.

Q. I ask you again then, is it possibly the \$1400 cash that you show on hand at the beginning of the year may have been a smaller figure at the end of the year, by reason of cash disbursements to the partners or cash disbursements in some other way, which would not be reflected in your receipts and disbursements analysis?

Mr. Campbell: Objected to as argumentative and speculative, if the Court please, not within the scope of direct examination.

The Court: You may answer the question.

A. It should.

Q. If proper entries were made?

A. That's right. [1959]

(Testimony of Lynn Harkness.)

Q. What I am getting at is this, Mr. Harkness, your receipts and disbursements analysis that you mention, with respect to that particular item, would not disclose whether or not any cash disbursements or distributions had been made out of that cash fund, would it? Your test on that would be some other entry in the book, rather than your cash receipts and disbursements, isn't that right?

A. That's right.

Q. You stated that—correct me if I am wrong—but I understood you to state that there was no record in the books that any portion of the 1943 profit had been distributed to Mr. Pratt, did I understand you correctly on that?

Mr. Campbell: That was not the question. The question was as to 1944 profit.

A. That is right.

Q. Then I misunderstood—there is a showing of distribution to Mr. Pratt with reference to 1943 profits?

A. Yes, the book shows that \$3400 was from 1943 profits.

Q. And then you were questioned as to whether there was any record of any distribution to Mr. Pratt over and above \$3400 and I believe you said there was no entry in the books?

A. None that I recall.

Q. You did, however, hear the testimony of Mr. Pratt to the effect that he had been paid an additional two thousand dollars by cancellation of an indebtedness? [1960]

(Testimony of Lynn Harkness.)

Mr. Campbell: I suggest that this is argumentative, if the Court please.

The Court: I think so. Objection sustained.

Q. Did you examine the records in evidence here which set that forth in the documents presented by Mr. Pratt?

Mr. Campbell: Objected to as not within the scope of examination, whether he examined exhibits produced by some other witness.

The Court: I will sustain this objection. I think it is based on testimony of Mr. Pratt.

Mr. Avakian: Based upon the documents in evidence.

The Court: Read the question.

(Question read.)

The Court: I don't understand the question myself.

Q. I call your attention to prosecution's Exhibit 160 and ask you if you have examined the three sheets which are set forth in that document?

Mr. Campbell: Objected to as incompetent and immaterial and not within the scope of direct examination. Those purport to be the bill of sale, your Honor, that Mr. Pratt testified to.

The Court: This witness did not testify that this summary was made from any reference to that exhibit.

Mr. Avakian: But he did testify as to the amount paid to Mr. Pratt.



(Testimony of Lynn Harkness.)

The Court: But he testified to what he saw in the books [1961] and records.

Mr. Campbell: He did not testify to what he was paid, but he testified to what the books showed.

The Court: Objection sustained.

Q. Were there any other records, entries, in the books with respect to this \$3400 payment to Mr. Pratt? A. I found none.

Q. Do you have the other volume of Exhibit 112?

A. The general ledger, yes, sir.

Q. I call your attention to Exhibit 112, record of journal entries, page 21, month of May, 1945, and I will ask you if you find on that page any entry relating to the \$3400 payment to Mr. Pratt?

A. There is an adjusting entry of the year 1943, net income, in which Mr. Pratt's name shows up for \$3400.

Q. What does that entry show?

A. That is debit to W. E. Kyne Trustee account and credit to Arthur R. Pratt account.

Q. And then I call your attention also to a sheet in the other volume of Exhibit 112, entitled "Account Liability," name W. E. Kyne, Trustee, and I ask you if you find an entry there with respect to the payment of \$3400 to Mr. Pratt?

A. That is the other half of this same entry.

Q. So that by entries in the book the \$3400 payment to Mr. Pratt was carried forward into a capital account, was it not? [1962]

A. Yes. As I said before, his account showed a credit of \$3400.

(Testimony of Lynn Harkness.)

Q. And that was carried into a capital account?

A. Yes.

Q. I note from examining Exhibit 163 that there is shown as the net worth at the end of 1946, the figure of \$33,210.35, and I see that the total which you have set forth for that same date as capital accounts for the books is \$39,399.77, a difference of approximately six thousand dollars. Now, first of all, Mr. Harkness, would you state, as an accountant, that the net worth of a partnership business represents the capital accounts of the partners?

Mr. Campbell: Objected to as speculative and argumentative and not within the scope of direct examination.

The Court: Objection overruled.

A. Yes, that is correct.

Q. And with proper and complete entries in a proper set of books, the total of the capital accounts of the partners would be the same figure as the net worth of the partnership, would it not?

A. That's right.

Q. In other words, the capital accounts of the partners represent the portion of the business' net worth which each partner owns?

A. That is right. [1963]

Q. Now, I note that in capital accounts you have set forth at the end of 1946, Wm. E. Kyne, Trustee account, \$5985.44. Will you refer to the page in the book which shows that particular entry?

A. Yes, sir, I have it.

Q. You have shown me from the Exhibit 112 ac-

(Testimony of Lynn Harkness.)

count number "Liability" an entry under what date?      A. May 31, 1945.

Q. Is there any entry showing that that was the balance of the account as of December 31, 1946?

A. No, sir.

Q. That is the last entry in the account?

A. That is right.

Q. Then it was your assumption, was it not, that that continued to be the balance in that account?

Mr. Campbell: I object to the question in that form, as to assumption. The book speaks for itself. The last balance, that entry, of course, is the final balance in the account.

Mr. Avakian: I would like to be heard.

The Court: Objection is overruled.

A. That's right—

Q. That was an assumption?

Mr. Campbell: Let him finish his answer.

A. That was the last entry in the book. I found no other entries affecting that account. [1964]

Q. And so you assumed that that continued to be the balance at the end of the year?

A. Yes.

Q. So that when you stated on direct examination that the amounts shown on the particular days of December 31, 1943, 1944, 1945 and 1946 shown in Exhibit 163 were a summary of the amounts shown in the books or any other sources that you referred to for those particular dates and were not based on assumptions, you did not mean to imply that the entries in the books were made exactly on

(Testimony of Lynn Harkness.)

the dates that you set forth in your summary, did you?

A. I do not exactly understand your question. You mean all the entries made on December 31st of each year?

Q. When you have listed assets in your exhibit 163 and liabilities on that date as of December 31, 1946, you did not mean to imply that in every instance there is an entry in the sources of materials which you used, showing that to be the exact figure on that exact date?

A. No.

Q. To a certain extent you relied on assumptions that if no further entries were made, there were no changes?

A. I relied on the books as they appeared when I made the summary.

Q. And in the case of "Furniture and Fixtures," the last entry in the book January, 1946, \$13,496.39, in that case you did not [1965] assume that that continued the same throughout the year, did you?

A. I didn't make any assumption. I used the figure on the return.

Q. But in the case of Mr. Kyne's account of \$5,985.44, shown as of May 31, 1945, in that case, in view of the fact that there was no further entries on the page, you did assume that that balance continued right down to the end of 1945, and also the end of 1946, is that right?

Mr. Campbell: Object to as being a matter of assumption.

(Testimony of Lynn Harkness.)

Mr. Avakian: If he did not assume, he can state; if he did assume he can state.

The Court: Objection will be overruled.

A. As I stated, I used the figures that showed on the books.

Q. Now, would you eliminate—and I will give you a sheet of paper if you want to work this out—would you eliminate from Exhibit 163 the item as Wm. E. Kyne, trustee account, \$5,985.44, as of December 31, 1946, and tell me what the total of the capital accounts would then be?

Mr. Campbell: To which I object as not proper cross-examination.

The Court: Objection sustained.

Mr. Avakian: Aren't we entitled to see what the result would be if he had not made the assumption he did?

The Court: That is a matter not within the scope of [1966] direct examination. It is a matter of calculation.

Mr. Avakian: It is a matter of testing what the results would be if he had not made the assumption that he made.

The Court: Objection sustained.

Q. Let me recall to you, Mr. Harkness, your testimony that the capital accounts of the partners of the business represent net worth of the business and should be the same figure, and let me ask you this—if you eliminated the \$5,985.44 Kyne account, which I mentioned, from your 1946 capital account closing figure, would not the total of the capital

(Testimony of Lynn Harkness.)

accounts then be within a few dollars of the net worth shown on Exhibit 163?

Mr. Campbell: Objected to as argumentative and not proper cross-examination.

The Court: Objection sustained.

Mr. Avakian: Your Honor, I just can not cross-examine an expert witness under these theories if I am not permitted to ask him what would have happened to his computations if certain adjustments which are supported in the evidence are made. How can I cross-examine if I can't test that, your Honor. My understanding of the rules of cross-examination of experts is that you may probe as to all things which enter into their computations and to the extent that they rely on judgment or assumptions you may question to show what would have happened if they exercised their judgments and assumptions in a different direction, so long as it would likewise be within the scope of the [1967]

The Court: I think the ruling will stand.

Q. Now, under date of December 31, 1946, you have set forth certain amounts as capital accounts in the books of William E. Kyne, Frank Cavani, Thomas C. Turner, and Elmer Remmer. Will you first of all explain the manner in which you arrived at the figures that are shown in that column?

Mr. Campbell: I object to the question in that form, as to having arrived at the figures. I think the source of the figures——

Q. Where did you get them? Do you understand the question, Mr. Harkness?

(Testimony of Lynn Harkness.)

A. Am I permitted to answer?

Mr. Campbell: I think the question was amended to "Where did you get the figures."

The Court: You may answer.

A. I got the figures from the capital accounts as set forth in Exhibit 112A.

Q. And you are referring to what particular pages? A. To the last page.

Q. And I take it that you used only the last balance figure shown during the year 1946 for each partner?

A. I believe so, but I would like to check it with the exhibit.

Q. I think that is correct, but I will have you check it. A. Yes, that is correct.

Q. Now, you stated in your direct examination that you had been [1968] an Internal Revenue agent since the year 1945, and you have been assigned to the San Francisco office during all that time? A. Yes, sir.

Q. And prior to that you were doing accounting work in the Navy Department about five years?

A. Yes, sir.

Q. And then I believe you stated that you were doing accounting work for a newspaper, the Sun Company of San Bernardino?

A. That is right.

Q. You are, I take it, of course a licensed accountant? A. Yes.

Q. And a certified public accountant?

A. No.

(Testimony of Lynn Harkness.)

Q. How long have you been licensed as a public accountant?

A. Ever since the law came in, I believe in 1946 or 1947; I am not positive of that date.

Q. And you are licensed in the State of California?

A. Yes, sir.

Q. Now, you state you were assigned, with other agents, to the investigation of the returns of Mr. and Mrs. Remmer. Can you tell us the approximate date of that assignment?

A. It was about October 15, 1947.

Q. And since that time you have been working on that matter, I take it, at various times?

A. Not all the time. [1969]

Q. I say various times. You have also been working on other cases during the same period?

A. That's right.

Q. And in connection with your assignment you made an examination of the books and records of the 110 Eddy Street?

A. Yes, sir.

Q. And you also made examination of the tax returns of 110 Eddy, is that correct?

A. That is right.

Q. And you analyzed the books in comparison with the returns, I believe you stated, is that correct, or is that correct?

A. Yes, that is correct.

Q. In making that analysis did you find that in the year 1946 the partnership return of the year 1946 for 110 Eddy actually showed more profit on the return than the books showed?

Mr. Campbell: Objected to as not being within



(Testimony of Lynn Harkness.)

the scope of direct examination. If counsel desires to make the witness his own——

The Court: Objection sustained.

Mr. Avakian: He stated on direct examination he examined these returns.

The Court: Objection sustained.

Mr. Avakian: May I be heard on it, your Honor?

The Court: No, sir.

Mr. Avakian: You won't let me be heard on the matter? [1970]

The Court: I said no.

Mr. Avakian: May I make an offer of proof, your Honor?

The Court: Yes.

Mr. Avakian: I offer to show——

The Court: Make it in the absence of the jury.

Mr. Avakian: Whichever your Honor says.

(Jury and alternate jurors admonished and excused until 1:30 p.m.)

(In the absence of the jury.)

(NB 333—pp. 90-94.)

January 10, 1952—1:30 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. HARKNESS**

resumes the witness stand on further

Cross-Examination

By Mr. Avakian:

Mr. Avakian: Your Honor, during the noon recess, in examining Exhibit 163 for identification, which you will recall are work papers Mr. Harkness said he referred to in part in preparing 163, we noted in these work papers there is a reference for a particular item, reads "See 1945 work papers," apparently another set of work papers. We do not want to take time on that now, but we would like to request, but we would like to request the prosecution at some convenient time in the near future to see whether those work papers are likewise available here. I think that can be done at some convenient time [1971] without interrupting the proceedings.

Q. Mr. Harkness, let me hand you again for your use prosecution's Exhibit 163, together with prosecution's Exhibit 112A, and I will again call your attention to the amounts which you have listed as December 31, 1946, in the capital accounts of the partners. Did the amounts which you have listed include in them the respective partners' shares of the 1946 profit or loss of the 110 Eddy Club?

(Testimony of Lynn Harkness.)

Mr. Campbell: Objected to in that form, as calling for his conclusion, unless the question is stated as shown by the books.

The Court: I think that is what you mean?

Mr. Avakian: Well, that is what I mean.

Q. From your examination of 112A and examination of 163, can you tell us whether or not the amount which you have inserted in the closing capital accounts of 1946 include an allocation of the 1946 profit or loss of partnership?

A. No, they do not.

Q. And in order correctly to set forth the capital account of a partner at the close of a year, it would be necessary, would it not, to credit or charge his account with the profit or loss for that year, as the case may be?

Mr. Campbell: Objected to as calling for conclusion and not within the scope of direct examination.

The Court: Objection overruled. Answer the question. [1972]

A. Yes, that is right.

Q. Now, did you make an analysis of any kind for the purpose of determining the amounts of the 1946 profit or loss of the 110 Eddy Club as shown in the books of that enterprise?

Mr. Campbell: I don't understand the question. May we have the question?

(Question read.)

A. I do not recall right now if I did or not.

Q. The amounts you have set forth in 163 in the

(Testimony of Lynn Harkness.)

capital accounts of the partners at the end of 1946 should be reduced by the respective partners' share of any loss in the year 1946, in order to correctly reflect the amount of his capital at the end of the year, should it not?

Mr. Campbell: Objected to as calling for his conclusion and not within the scope of direct examination, what the books show.

The Court: Objection sustained.

Q. Well, you testified a moment ago, in order to correctly set forth the amount of the capital of each partner in the business at the end of the year, it would be necessary to either credit his account with his share of the profit for the year, if there was profit, or to charge his account with the amount of his share of any loss for the year, if there was a loss. Is that correct?

Mr. Campbell: Objected to—the books speak for themselves. [1973]

The Court: You may answer the question.

A. That is true, but the figures represent figures in the books.

Q. There are also figures in the books showing 1946 income and expenses, aren't there?

A. Yes.

Q. And isn't it a fact, Mr. Harkness, that you made a determination in your examination of the 1946, 110 Eddy records, that for the year 1946, Mr. Remmer, instead of having his share of gain, \$4748, shown on Exhibit 83, 1946 partnership return, actu-

(Testimony of Lynn Harkness.)

ally had a loss for that year, that is, his share of the loss for that year, \$1740.11?

Mr. Campbell: Objected to on the same grounds heretofore stated to the same question, and not within the scope of direct examination.

Mr. Avakian: Your Honor, I would like to be heard on that if I may. This witness has been offered here to present a partial net worth computation, insofar as it is reflected in 110 Eddy Street Club. He has testified in order to correctly set forth the net worth, the figures which he has in his exhibit at the end of 1946 should be adjusted by Mr. Remmer's share of either profit or loss, as the case may be. The whole purpose of this exhibit is to build up step by step, and this is one of the steps, Mr. Remmer's net worth. Now, the witness has testified [1974] in order to do that accurately, you would have to subtract his share of loss, if there was a loss. Having testified to that, my question to him is, didn't he make a determination in which he found for the year 1946, Mr. Remmer's share of the loss was the amount I just read, \$1740.11, and if his answer should be yes, then obviously the amount of net worth shown for Mr. Remmer in 163 should be reduced by that sum to correctly set it forth.

The Court: You may answer.

A. As I stated before, I finally determined the net profit of 110 Eddy was considerably different than shown in the return. I do not recall making a determination of the amounts shown on the return.

(Testimony of Lynn Harkness.)

We would go by the result of our audit for 110 Eddy, our final determination.

Q. Let me ask you this first, without regard to the amount, do you recall that you did, at one time, make a determination to the effect that the 1946 operations of 110 Eddy Club resulted in a loss for Mr. Remmer?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You are quite sure of that?

A. No, sir, our final figures will show a substantial gain.

Q. Did you at any time make such determination?

A. I do not recall it. [1975]

Q. Was any other agent besides yourself assigned to make a determination of the operations of 110 Eddy Club?

A. The examination was done together all the way through by Mr. Morgan and myself.

Q. Do you know whether Mr. Morgan made such a determination?

A. I can't say.

Q. Did you determine at any time from your examination of the books of 110 Eddy Club, which are in evidence here, that on the basis of the information in those books, Mr. Remmer's share of the operations for the year 1946 was a loss?

Mr. Campbell: I am going to object to that as not within the scope of direct examination of this witness.

Mr. Avakian: It is in evidence that he examined the books which are the basis for 163.

The Court: You may answer the question.

(Testimony of Lynn Harkness.)

A. I do not recall that.

Q. Do you recall making any determination as to what the books, which are in evidence here, showed as to whether there was a profit or a loss, insofar as Mr. Remmer's share was concerned, for that year?

A. I recall—you are speaking of 1946?

Q. That's right.

A. As I stated before, it was impossible to take off a trial balance with any degree of accuracy from these books. The only thing that was fairly complete was the cash receipts and [1976] disbursements. I couldn't say definitely if actual book profit was determined by that.

Q. You don't know whether you did or not?

A. I don't recall.

Q. Would you be able, after you are off the stand, to determine from an examination of your papers, whether you did at any time make such an analysis of the books of 110 Eddy, for the year 1946?

A. You mean showing Mr. Remmer's distribution as being a loss?

Q. That's right. In other words, are there papers in the building from which you could determine whether or not you did make such a determination?

A. Well, I would have to look at the papers.

Mr. Avakian: Your Honor, I have this suggestion to make with respect to cross-examination. I believe there will be other agents who will make use of the exhibit which this witness has presented in connection with their own compilation, and depend-

(Testimony of Lynn Harkness.)

ing upon what else it may or may not be necessary to cross-examine Mr. Harkness further, may we terminate our cross-examination with the understanding he will be available for further cross-examination?

Mr. Campbell: He will be available, of course, but I think so far as possible on matters which he has gone into on direct, the cross-examination should be concluded.

The Court: You may have further cross-examination if [1977] it appears necessary.

Mr. Avakian: Thank you. That is all.

#### Redirect Examination

By Mr. Campbell:

Q. Mr. Harkness, Mr. Avakian asked you with relation to prepaid rent and whether or not as an asset in any of the years you had shown any prepaid rent and directed your attention to a page in the ledger of 110 Eddy Street relative to prepaid rent. Now, you have stated you have seen that page in your examination. As of the end of any of the years 1943, 1944, 1945 and 1946, did there exist any outstanding prepaid rent, as disclosed by those books?

A. The books are not complete. The last entry in the book is November 29, 1945.

Q. The account was closed out at that time, was it not?

A. Well, at that time, there would be a balance of \$210.



(Testimony of Lynn Harkness.)

Q. Did your examination of the cash receipts and disbursements disclose whether that had been used up prior to the end of the year?

A. No, I don't believe it showed that.

Q. So if there was any prepaid rent, it would be in amount of \$210?

A. That's right. You would also have to have the complete story before the account started. It started on May 31, 1945.

Q. And the last entry is in November, 1945, is that correct? A. That's right. [1978]

Q. And from May until November, it shows monthly debits of \$210, which also represented by checks prepayment of rent, and then a counter-credit entry on the first of each month following, crediting \$210, is that correct?

A. That is correct.

Q. That would indicate what in regard to this prepaid rent?

A. Well, at the end of any one month the prepaid rent was set up and then it was closed out the following month when the rent was paid.

Q. Will you examine the dates and state what the account indicates as to the custom of paying the rent for the following month?

Mr. Avakian: If the books do show the custom. If it is going to be a conclusion——

Q. Let us take the first entry. The first entry shows debit on May 31st of \$210, does it not?

A. That's right.

Q. And there is a credit on June 1st, \$210?

(Testimony of Lynn Harkness.)

A. That is correct, both from the journal entry.

Q. And the next debit is check issued June 30th for \$210, which becomes the proportionate rent on that date?

A. Right.

Q. And on July 1st that is credited by journal entry and the account checks out?

A. Correct. [1979]

Q. And the same thing occurs in each month thereafter, does it not?

A. That is right.

Q. And payment of rent is made on the last day of the month and shows proportionate rent and then it is credited out as rent paid on the first day of the following month?

A. That is correct.

Q. Now, with regard to Exhibit 163, I believe at the time this was marked for identification you pointed out to counsel where by error you had incorrectly carried over the figure of one of the income tax returns, is that correct?

A. That is right, profit figure.

Q. That is profit for 1945 as shown by the return, and that was pointed out to counsel yesterday afternoon?

A. Yes.

Q. Will you correct that figure?

A. Could I have Exhibit 82. Do I understand I have permission to change it?

Q. Yes, if you will write that on the face of the exhibit, the figure that was pointed out yesterday. I think there is no objection.

Mr. Avakian: That is agreeable to have him change that.

Mr. Campbell: Makes just a dollar difference, I think.

Mr. Avakian: \$1.02.

Mr. Campbell: That is right. [1980]

Mr. Avakian: I do not know whether I made myself clear. We would like to ask, through the Court, that this witness search his files to see if he did make determination I mentioned to him at any time.

The Court: That is all this witness is required at this time?

Mr. Avakian: At this time.

The Court: You may be excused.

LOUIS H. MOOSER, JR.

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. Will you state your name?

A. Louis H. Mooser, Jr.

Q. Where do you live, Mr. Mooser?

A. 6815 California Street, San Francisco.

Q. What is your business or occupation, Mr. Mooser?

A. I am Deputy Collector of Internal Revenue for the Northern District of California.

Q. Where is your posted duty?

A. San Francisco.

Q. How long have you been a deputy collector?

(Testimony of Louis H. Mooser, Jr.)

A. About 15 years.

Q. To what branch or division of the Collector's office are you assigned?

A. As a Deputy Collector to investigate general taxes. [1981]

Q. Are you in what is known as the field division?

A. Field division, yes.

Q. And as a deputy collector, your primary duty is that of collecting taxes, is that right?

A. Yes, delinquent taxes.

Q. Now, during the year 1944, did you have occasion, pursuant to your duties and under instruction of your superiors, to be making what is known as a spot check on Eddy Street in San Francisco?

A. Yes.

Q. What is meant by spot check?

Mr. Gillen: We offer the objection they are leading and suggestive questions.

Mr. Campbell: It is a preliminary question.

The Court: Objection overruled. Answer the question.

Q. What is meant by a spot check?

A. Spot check means taking every taxpayer and making inquiry regarding all federal taxes, as to whether the proper returns have been filed and proper taxes paid upon them.

Q. In 1944 were you assigned to make such a check of some portion of Eddy Street in San Francisco?

A. Yes.

Q. Generally speaking, what was the area in which you made such a check?

(Testimony of Louis H. Mooser, Jr.)

A. Between Mason, four square blocks, around Mason and Eddy [1982] Streets.

Q. And did that include the block in which is located the address known as 186 Eddy Street?

A. Yes, it did.

Q. In what month or months were you making this so-called spot check, where you were checking each taxpayer within that area?

Mr. Gillen: He didn't give the area, he didn't say which direction.

Q. Well, will you give the particular blocks, your best recollection?

A. Well, it was down Eddy from Mason to Powell and up and over to Ellis and down to Mason again on that block.

Q. That square block, and I ask you if that area which you were covering included the address known as 186 Eddy Street?

A. Yes, it did.

Q. In what month or months were you conducting that particular survey?

A. April and May of 1944.

Q. Now, in the course of your survey, spot check, did you conduct any investigation on the premises known as 186 Eddy Street?

A. Yes, I did.

Q. And do you recall when that was?

A. The first time that I visited the establishment was on May 1, 1944. [1983]

Q. And had you ever been on those premises before that time?

A. No.

Q. Had you been directed by anyone to go

(Testimony of Louis H. Mooser, Jr.)

specifically to those premises, or did they simply fall within the area in which you were making this investigation?

A. They fell within the area, but I was also further directed to go——

Mr. Avakian: If this is going to be hearsay, I would like to have the foundation laid to see if it is admissible.

The Court: I don't recognize it as hearsay.

Mr. Avakian: I thought he was starting to give——

The Court: Read the answer.

Mr. Campbell: We will stop at "it fell within the area."

Mr. Avakian: May the rest be stricken?

The Court: It may go out.

Mr. Campbell: I have no objection.

Q. Now, you say that was about May 1st?

A. 1944.

Q. Let me ask you this, after your first visit to those premises on May 1, 1944, did you have further visits to those premises? A. Oh, yes.

Q. And extending over what period of time?

A. Over the entire month of May, 1944.

Q. And at the end of May, 1944, was that your last visit there? [1984]

A. Yes, that I can recall.

Q. Now, at the time you entered the premises at 186 Eddy Street, will you describe the premises that you physically saw, the physical appearance of the premises?

(Testimony of Louis H. Mooser, Jr.)

A. Immediately to the right of the entrance was a cigar stand and there was a barricade or rather a door——

Q. A partition?

A. Partition, yes, with door on the end and door at the right going into the rear room, as I recall it.

Q. Did you enter the rear room? A. Yes.

Q. Will you describe the premises?

A. Well, there were card tables there.

Q. Do you recall approximately how many?

A. To the best of my recollection at that time I think there were about thirteen.

Q. Now, on the occasion of your first visit there who, if anyone, did you meet and have any discussions with without relating the conversation? Who did you meet there? A. Mr. Busterna.

Q. Do you refer to Bert Busterna?

A. Yes.

Q. And during the course of your investigations there who, if anyone, in addition to Mr. Busterna, did you meet with or have discussions with concerning the operations of that establishment? [1985]

A. Mr. Slater, one of the bookkeepers, and Mr. Willis Kyne.

Q. How was he known?

A. He was known as Willie, but as I had it, it was Willis. That is all at that time.

Q. Now, as a result of your going there on the first occasion, were you shown any tax returns purporting to be tax returns filed by the 186 Club?

A. No, I was referred to Mr. Slater.

(Testimony of Louis H. Mooser, Jr.)

Q. Well, as the result of reference to Mr. Slater, were you shown any returns or copies of returns?

A. Yes, he showed me the corporate tax returns, then known as Victory tax return, and social security return and the partnership return, as well as the corporation return, covering a portion of the period.

Q. Whose return did the corporation return purport to be?      A. For the 186 Club.

Q. Did you subsequently ascertain that that was the return of the operators at the time you examined the club, or by some prior operators?

Mr. Gillen: Objected to as leading and suggestive.

The Court: You may answer the question.

A. This was return prepared by the previous owners of the stock of the corporation, or owners of the club, which purported to show the operations of the club up to the time of its transfer to the new owners. [1986]

Q. You say you were shown a copy of the partnership return?

A. It wasn't a copy, it was the original.

Q. What was the date that you saw that?

A. The first few days of May. I wouldn't say exactly the date.

Q. Did you take that return away with you?

A. No, I did not.

Q. I am going to show you defendant's Exhibit "P," purporting to be partnership return for income of 1943 of the 186 Club filed with the col-



(Testimony of Louis H. Mooser, Jr.)

lector April 15, 1944, and ask you if you have seen that document?

A. I don't think so. May I clarify my answer to another question? When I said I had seen the original, I was referring to the corporation return and not to this.

Q. You saw an original return?

A. Yes, an original of the corporation, which never had been filed. I saw a copy of this.

Q. You saw a copy of this defendant's Exhibit "P"? A. Yes.

Q. And you were also shown, as I understand you, the original of the corporation return which had not been filed? A. That is correct.

Q. Did you make a copy of that return?

A. I believe so.

Q. Do you know where that is? [1987]

A. No, I do not.

Q. Now, at the time you were shown these returns, I will ask you whether or not you requested to see the books and records of the 186 Club?

A. Yes, I did.

Q. Will you state what, if anything, you were shown?

A. Exclusive of the employment record, I saw a book of the win and loss book prepared by the day. I mean, it would show at the end of each period—I believe the club was open 24 hours a day and they had shifts—at the end of each shift an entry would be made whether a loss or gain at the end of the shift.

(Testimony of Louis H. Mooser, Jr.)

Q. Just a single figure at the end of each shift, loss or gain?

A. As I recall one figure, either win or lose.

Q. And you say exclusive of pay roll records. Did you see pay roll records there?

A. Yes, I saw the complete pay roll record at Mr. Slater's office.

Q. In what form were they kept?

A. They were kept in pretty good shape, in regular employment record, pay roll record form.

Q. Did they appear to be a full and complete record?

A. I afterward got a copy of it and questioned each and every item. I think there were 150 odd employees.

Q. And you found this to be reasonably accurate?  
A. Yes. [1988]

Mr. Gillen: He said he found it in good shape.

Mr. Campbell: Good shape and reasonably accurate.

Mr. Gillen: I don't think so.

Mr. Avakian: I object to the word "reasonably." It calls for conclusion and opinion.

The Court: Objection overruled.

Mr. Gillen: He misquoted the record.

The Court: I wouldn't say it is misquoting the record.

Mr. Gillen: That is not what the witness said. The witness didn't say reasonably accurate at all.

The Court: Objection overruled.

Q. Aside from the book which you described

(Testimony of Louis H. Mooser, Jr.)

as containing a win or lose figure for each shift, did you see any other records?

A. Only the records of the current day of each cashier. I asked to see those.

Q. And in what form were they kept?

A. They were in the form of a slip, a sheet, which would show the total of the operation during that particular man's shift.

Q. May I ask you, in making your inquiries and such examination as you made there, were you examining with relation to some specific tax period?

A. Well, with regard to the withholding and social security tax.

Q. As to all the taxes?

A. As to all the taxes, whenever they should have been filed [1989] up to that time.

Q. Up to the time of your investigation?

A. Yes.

Q. Now, you say you saw these daily sheets. Do you recall what they were called? Was there any name to the sheets?

A. That I can't say.

Q. And you say current sheets?

A. Well, I mean for that shift when I was there.

Q. Did you see any for the period prior to the occasion of your being there?

A. For a couple of days prior.

Q. Did you inquire as to records back beyond that?

A. I was told that they were destroyed.

Q. Did you ever see any for a period back before that?

A. No.

(Testimony of Louis H. Mooser, Jr.)

Q. Did you inquire whether or not there were other records maintained other than the pay roll record and this book showing win and lose that you have referred to?     •     A. Yes, I did inquire.

Mr. Avakian: May we have the names of the persons these conversations took place with so we may know?

Mr. Campbell: Very well.

Q. Of whom did you make these inquiries?

A. Of Mr. Slater and Mr. Kyne.

Q. Did you ever receive any additional [1990] records?     A. No, I did not.

Q. Mr. Mooser, did you then attempt in any manner to ascertain the daily income of the 186 Club?     A. Yes.

Q. And in what manner did you do so?

A. Well—

Q. Just the method that was used?

A. By comparing the slips and totalling the wins and the losses of the slips for a given period. I compared those with the amounts entered in the book.

Q. For what period of time did you do that?

A. That was just for the immediate period of time I was there, not going back more than two days.

Q. As I understood you, records were not available prior to one or two days before you went in there?     A. That is right.

Q. When was this comparison made, that is to say, did you make it daily or in what manner?

(Testimony of Louis H. Mooser, Jr.)

A. The first comparison I made was immediately and while I was there and it was because of the discrepancy I found there that I compared further.

Q. On the first occasion that you went there, did you make a comparison between the book you referred to and the cashier's sheets that were available?      A. Yes, I did. [1991]

Q. And compared one against the other?

A. Yes.

Q. And state what you found with relation to the book you saw as reflecting fully and correctly the amounts shown on the daily sheets.

Mr. Avakian: Just a moment—objected to as calling for opinion and conclusion of the witness and also on the ground that the record of any findings that he made would itself be the best evidence of this, bearing in mind this is a matter that goes back several years. Unless a foundation is laid by showing no record was made, we object to testimony in this form.

The Court: Let me have the question.

(Question read.)

The Court: Objection overruled. Answer the question.

A. I found that in no case did the amounts totalled upon the sheets agree with the amounts entered upon the books.

Q. Which was higher and which was lower?

A. Well, I found them both ways.

(Testimony of Louis H. Mooser, Jr.)

Q. Now, as a result, will you state whether or not you found any relationship or correlation, based upon your examination, between the daily sheets and the book which purported to record the wins and losses for each day?

Mr. Avakian: We object as calling for speculation, opinion and conclusion. He testified the discrepancies were both ways and as to whether there was any correlation is purely [1992] a matter of conclusion.

The Court: The objection will be sustained.

Q. Did you take that book away with you?

A. No, I did not.

Q. And when was the last time you saw it?

A. I don't think that I had occasion to look at the book again after probably the third visit. It could have been about the third or fourth of May.

Q. Where was it when you last saw it?

A. In the possession of Mr. Kyne.

Q. And you have not seen it since?

A. Or Mr. Busterna.

Q. Have you seen it since that time?

A. No, I never have.

Q. Will you state for the period of the few days that you examined, that is on your initial visit, where you compared the book and the daily sheet, if the sum total of the daily sheets was more or less than that shown in the book?

Mr. Avakian: Just a moment—I object on the ground it is calling for opinion and conclusion and there has been no foundation laid by way of show-

(Testimony of Louis H. Mooser, Jr.)

ing that there is no memorandum or report which would set forth this matter accurately. I object to the use of a seven-year-old recollection when there probably must have been a report made.

The Court: Objection overruled. Answer the question. [1993]

A. The slips showed more than was entered in the books.

Q. Now, after you made that determination, or after you found that, what then did you do, or what method of examination did you then follow, for the purpose of determining income?

A. I made a study of the slips over a period, beginning, I believe, May 16th and ending May 28th, so as to strike an average.

Q. And during that period of time did you visit the premises daily? A. Yes.

Q. Just describe what you did there.

Q. Well, I would go and pick up the slips for each day—

Q. From whom would you pick those up?

A. From whoever was in charge, mostly from Mr. Busterna, and I made a chart.

Q. As to the wins and losses for each shift.

A. That's right.

Q. And was that charge made at the time you were making that examination? A. Yes.

Q. And do you have that chart with you?

A. Yes, I have.

Q. Will you produce it. You have handed me a large sheet headed, "186 Club, San Francisco,"

(Testimony of Louis H. Mooser, Jr.)

and I will ask you if this is the charge to which you refer? [1994]      A. Yes, it is.

Mr. Campbell: I will ask to have this marked for identification as plaintiff's 166 for identification.

Q. Now, for the further purpose of identification, Mr. Mooser, I call your attention first to the columns appearing at the top of the page, there are indicated certain dates. Are those the dates upon which you made the examination?      A. Yes.

Q. And there are under each day two columns, one headed "Win" and one headed "Lose," under which appear various figures. Where did you obtain those figures?

A. From the cashier's ticket, I believe they call it.

Mr. Avakian: Since the examination is going into the contents and this is marked simply for identification, I wonder if we may examine it?

Mr. Campbell: I shall further identify it to assist you in examination.

The Court: You may proceed.

Q. I am going to show you plaintiff's Exhibits 110 to 110F, and ask you if you, in the course of your examination, saw this type of sheet?

A. My recollection is that they were much the same type of material, but on a much smaller sheet at that time.

Q. A smaller sheet?      A. Yes. [1995]

Q. At any rate, those figures, as I understand it, were obtained from the sheets which you obtained from the cashier, is that correct?



(Testimony of Louis H. Mooser, Jr.)

A. Yes.

Q. And I notice there are here 7 days and below are some 5 days. Do I understand this was the period upon which you gathered this material?

A. Yes.

Mr. Campbell: It will take a little time to examine this.

The Court: We will take a recess.

(Jury and alternate jurors admonished and recess taken at 2:20 p.m.)

2:35 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

### MR. MOOSER

resumes the witness stand on further

### Direct Examination

By Mr. Campbell:

Q. Mr. Mooser, referring to 166 for identification, you have identified this, have you not, as the chart which you prepared during the 10 days or two weeks that you were on the premises on the dates indicated in May of 1944? A. Yes.

Mr. Campbell: This will be offered in evidence, government's 166. [1996]

Mr. Avakian: Now, we again, only for the purpose of ascertaining the ruling in this jurisdiction, object to it on the ground it represents a conclusion

(Testimony of Louis H. Mooser, Jr.)

and not proper evidentiary material and no foundation laid. As I said earlier, it is simply for the purpose of determining what rules should be followed.

The Court: The exhibit will be admitted in evidence, No. 166.

Q. Now, Mr. Mooser, in computing this chart, what did you find to be the average of the wins per day?

A. Eighty dollars a day was the figure determined to be a fair average.

Q. What was the actual average of the period?

A. Well, the average—

Mr. Avakian: Objected to—just asked and answered.

The Court: Objection overruled.

A. The actual average for the period was about \$98.

Q. And when you say \$80 per day, how did you arrive at that figure?

A. Because the last week was a short week and business was much better in 1944 than it was in 1943, and therefore I made that distinction so as to reduce it to the actual figure for the previous months. In other words, business was getting better as time was going on.

Q. You were attempting to ascertain some kind of an average for 1943? [1997]

A. That's right, for the fiscal year 1943-1944, and I took into account the fact that the business was improving in that line of business between '43

(Testimony of Louis H. Mooser, Jr.)

and '44, and since this was to go back to '43, I adjusted it downward so as to reach a figure of \$80.

Q. Now when you completed that examination in May of 1944, did you then pick up, Mr. Mooser, a corporation income and declared excess profits tax return of the 186 Club for the period July 1, 1942, to June 30, 1943? A. I did.

Q. I am going to show you defendant's Exhibit "J," and ask you if that is the return which you picked up? A. Yes, it is.

Q. And is that your signature as attesting deputy collector? A. Correct.

Q. I notice this is dated the 31st day of May, 1944, is that the date upon which you received it?

A. Yes.

Q. And do you recall upon what basis the gross receipts and the gross profits were arrived at in that return, if you know? A. Yes, I do know.

Q. And in what manner?

A. That could be divided into two sections, my answer. First of all I found a form 1120 covering the corporation's activities [1998] prior to the acquisition by the Remmer interests, and inasmuch as we were filing a corporation return on the fiscal year basis, the only figures that I had to include in this return were those that I found on the partially completed corporation return which was left on the premises when the former controller of the corporation, Silverman, left. I just took those figures and combined them with the figures that I took from the second part, which is based on the \$80 a day

(Testimony of Louis H. Mooser, Jr.)

for 122 days, if my memory serves me, for the balance of the fiscal year, which then gave me a gross income of \$12,768 gross. I then used only the expenses that were shown on the original return, for the reason that the figures that I used in the \$80 a day business were net figures, so I added the total amount of the \$80 a day for the 122 days to the amount that appeared on the original return, which computed would be the tax.

Q. Those are the figures that are set forth in this return, upon which you have acknowledged the signature of Bert Busterna and William E. Kyne, is that correct?      A. Yes.

Q. After this corporation return was filed, Mr. Mooser, did the Collector's office then have further jurisdiction, so far as auditing of the return was concerned?

A. No, our jurisdiction ended there.

Q. Corporation returns, as a matter of law and regulation, are audited and handled by revenue agent's office, is that correct? [1999]

A. Except where we find a delinquent return.

Q. Where you pick up a delinquent return?

A. That is right.

Q. But I mean so far as the office is concerned?

A. That's right.

Q. Now, I direct your attention to plaintiff's Exhibit 87A for the fiscal year July 1, 1943, to June 30, 1944, and I direct your attention to the signature of the attesting deputy collector as to the corporate signatures and also of Mr. Slater, the ac-

(Testimony of Louis H. Mooser, Jr.)

countant, preparing the return, and ask you if that is your signature?      A. Yes, it is.

Q. Do you recall the circumstances—answer this yes or no—under which you affixed your signature there?      A. Yes.

Q. Where did that take place?

A. In the office of the Collector of Internal Revenue in San Francisco.

Q. Can you state upon what date?

A. On the 15th of November, 1944.

Q. That is the date upon which this document is acknowledged, is that correct?      A. Right.

Q. And do you recall who was present on that occasion?

A. Mr. Kyne and Mr. Slater. [2000]

Q. Was Mr. Busterna present, if you recall?

A. No, he was not. Nor were the other—

Q. I mean Mr. Casselini—it was Casselini's signature.      A. No, he was not present.

Q. As a deputy collector, do you have instructions relative to attesting the signatures of corporate officers on returns?      A. Yes—

Mr. Avakian: Just a moment—it has been answered.

A. Yes.

Q. What are your instructions about that?

Mr. Avakian: The instructions themselves are the best evidence. The Collector's manual on that should be produced so we can see what the instructions are.

The Court: He may answer the question.

(Testimony of Louis H. Mooser, Jr.)

A. We were directed to attest one signature on a corporate return.

Q. If one of the officers appeared before you?

A. Yes.

Q. Now at the time you attested this, did you make any examination of the return?

A. None whatsoever.

Q. At the time you attested these signatures, did you then retain the return?

A. No, I did not.

Q. What, if anything, was done with it, if you know? [2001]

A. It was taken away by the taxpayer.

Q. I call your attention particularly to typewritten Schedule 1 and ask you if you observed that at the time, at the time you attested the return?

A. No, I did not. I made no examination of the return whatsoever.

Q. Was this Schedule 1 subsequently called to your attention by any one? A. Yes, it was.

Q. When, to the best of your recollection?

A. To the best of my recollection some time after it was filed, probably the middle of 1944.

Q. I call your attention to the filing date, November 15th.

A. Well, at any rate some time after it was filed.

Q. By whom was it called to your attention?

A. By my superior officer.

Q. Who was that? A. Mr. John Boland.

(Testimony of Louis H. Mooser, Jr.)

Q. Who was then the Assistant Chief Field Deputy? A. That's right.

Q. Now at the time you made your examination and investigation there, did you give any one instructions or directions as to the keeping of books and records? A. Yes, I did.

Q. And to whom did you convey that? [2002]

A. Mr. Kyne.

Q. Do you recall when that was?

A. Well, I repeatedly made the same request of him that in the future correct records should be kept, books of account should be kept, so as to determine the tax liability.

Q. After the termination of your investigation you made during the course of 1944, did you have anything whatsoever to do with investigating the affairs of income tax returns of the 186 Club?

A. None whatsoever.

Q. You had nothing further to do with the matter?

A. May I also say I made that admonition in writing by giving them a copy of the letter which was letter of transmittal of the return and the copy of that letter was given to Mr. Kyne, in which the last paragraph admonishes about keeping proper records.

Mr. Avakian: May we have this letter, rather than a recitation?

Q. You say you delivered that to Mr. Kyne?

A. I did.

Q. Do you have a copy of it?

(Testimony of Louis H. Mooser, Jr.)

A. I have my original draft of it.

Q. Your original work copy of the letter?

A. Yes.

Q. Will you produce that. I notice this is in pencil. Was [2003] this typed up?

A. Yes, it was.

Q. And a typed copy given to Mr. Kyne?

A. Yes.

Mr. Campbell: I will ask that this be stapled together and marked 168 for identification.

Q. Mr. Mooser, is this your original report?

A. Yes, it is.

Q. May I ask you as to the copy which was delivered to Mr. Kyne, was it an exact typewritten copy of this document? A. Yes.

Mr. Campbell: This will be offered in evidence, 167.

Mr. Avakian: No objection.

The Court: Admitted in evidence, 167.

Mr. Campbell: At this time I will read this document, government's Exhibit 167, dated May 30, 1944.

(Reads Exhibit 167.)

You may cross-examine.

#### Cross-Examination

By Mr. Avakian:

Q. Mr. Mooser, I believe you stated that you made this investigation as a part of a spot check which you were conducting in a certain area in San



(Testimony of Louis H. Mooser, Jr.)

Francisco, is that correct? A. That is correct.

Q. And I believe you stated that the area began at the corner [2004] of what, Eddy and Mason?

A. Yes.

Q. And then it ran down Eddy to Powell?

A. Yes.

Q. And then up Powell to Ellis, is that right?

A. Yes. May I refer to my notes? In fact, I have a map.

Q. Yes.

A. Northeast corner Turk and Leavenworth, took another block, Jones down to Eddy, Taylor down to Mason and down Mason to Eddy, over Eddy to Taylor and Eddy to Grove and back over to Leavenworth Street.

Q. In connection with prosecution's Exhibit 167, which is the handwritten report addressed to John J. Boland, Assistant Chief Field Deputy, San Francisco, I note that you made the statement as follows: "The delinquency in filing the endorsed return was occasioned by the fact that the operators of this club were advised by their attorney to file as co-partnership and this was done." Did you, in the course of your examination, discuss this matter with the attorney of this enterprise?

A. Yes, I did.

Q. And that was Mr. John Taffe, was it?

A. Yes, it was.

Q. And he is now deceased? A. Correct.

Q. And you had discussion with him on this matter whether [2005] this enterprise should file as a

(Testimony of Louis H. Mooser, Jr.)

partnership or corporation?      A. Yes, I did.

Q. And it was his opinion, was it not, it should file as a partnership?      A. No, it was not.

Q. I thought you said here they were advised by their attorney to file as a co-partnership and this was done, is that correct?

A. May I explain?

Q. Yes.

A. When the matter was broached to Mr. Taffe regarding filing of the matter as a corporation, he said he felt he was between the devil and the deep blue sea and I said "Why"? He said, "Well, I concluded filing as a co-partnership would be the lesser of the two evils for this reason, by filing as a co-partnership releases of any risk getting in wrong with the corporation, and inasmuch as the corporation had been filed, and probably should be filed, if we filed as a corporation, we would then put ourselves in the position of being attacked by all card-carrying members of this corporation, the 186 Club, any one of which might come in and bring suit against the club or otherwise attack any profits that might be there."

Q. And you told him that in your opinion a corporate return should be filed?

A. Yes, and he agreed with me and I showed him the reasons.

Q. You stated you discussed this matter with various people. [2006] Did you name everybody that you had discussed this investigation with, or are there other people with whom you discussed it?

(Testimony of Louis H. Mooser, Jr.)

Mr. Campbell: May we have the question?

(Question read.)

Mr. Avakian: I will reframe it.

Q. Do you recall discussing the results of your examination with Revenue agent by the name of Sol Ezralow?

A. Yes, he called me up one time.

Q. And you discussed with him, did you not, this question of whether the 186 Club should file as a partnership rather than a corporation?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Q. During the time you were making your investigation you do have a recollection of the conversation, is that correct? A. Yes.

Q. Without telling me what the details of the conversations were, did they include the matter of whether the 186 Club should file tax returns as partnership or corporation?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Q. Well, isn't it a fact that Mr. Ezralow told you he thought it should file as a partnership?

Mr. Campbell: Just a minute—that is objected to.

The Court: Objection sustained. That is the third time [2007] it has been ruled upon.

Q. Now you also said in this report to Mr. Bolland, plaintiff's Exhibit 167, that in preparing the return you included in the income for a period of

(Testimony of Louis H. Mooser, Jr.)

eight months prior to the time that the new owners took over the enterprise. Do you recall that?

A. Yes.

Q. And I believe in your testimony you referred to the new owners as the Remmer interests, that was your understanding of it? A. Yes.

Q. And you knew at that time, did you not, that the 186 Club had already filed a partnership return of income for the year 1943? A. Yes.

Q. And you knew, did you not, that in picking up, as you phrase it, a corporate return for the year ending June 30, 1943, you were including in the income in that return the income for this business which had been reported on the partnership return for the period from March 1, 1943, to June 30, 1943? A. Yes.

Q. And you also knew that you were including in this corporate return income for the eight months preceding the time that the Remmer interests acquired the business, is that right? A. Yes.

Q. You stated that you talked to one Bert Busterna at the 186 [2008] Club. Was he the manager of the card room?

A. As I understand it, yes.

Q. And do you know what Mr. Kyne's capacity or connection with the club was?

A. Well, I would say he had the over-all management.

Q. During the time you were on the premises making your examination, was he present in the active management?

(Testimony of Louis H. Mooser, Jr.)

A. No, I don't think he actually worked on the floor. As I say, I believe he was on an over-all basis.

Q. He was an executive? A. Yes.

Q. And Mr. Slater was a public accountant, was he not? A. Yes, he was.

Q. And he had charge of keeping the records, is that correct?

A. He had charge of the pay roll records.

Q. And he had prepared the 1943 partnership return, of which you say you saw a copy at the time? A. Yes.

Q. Now were your discussions about this carried on with all three of these people I have named?

A. With Mr. Kyne and Mr. Slater. Mr. Busterna didn't know much about what was going on.

Q. You are quite sure that you did talk to some extent to Mr. Busterna?

A. Just simply to pick up the slips and such as that. I never [2009] discussed the matter of the liability of the club or anything like that, because, as I say, he just didn't know.

Q. Did you identify yourself to Mr. Busterna?

A. Oh, yes.

Q. Would it change your testimony at all if I told you when the prosecution called Mr. Busterna as a witness in this matter his recollection was he had never met or talked to you?

Mr. Campbell: Objected to as improper cross-examination.

The Court: He may answer the question.

(Testimony of Louis H. Mooser, Jr.)

A. Oh, that isn't so.

Mr. Avakian: I will take your word for it. I just want to make sure that you are sure.

Q. On prosecution's Exhibit 166, which you presented here as a chart of the analysis you made, I note two separate summaries for the date of May 18th, one of which is designated as "Corrected." Could you explain those two summaries for me?

A. I do not recall at the present time why I corrected that, but I know that there were corrections made on the slips and due entirely to Mr. Kyne's request I made these corrections. In other words, I believe that in going over the slips as I would pick them up, there would be various changes made in the final outcome, so that he gave me the corrected slips.

Q. Were both of those made by you at the same time, May 18th summaries? [2010]

Mr. Campbell: You mean simultaneously?

Q. On the same occasion?

A. I don't understand.

Q. Well, I noted that across the top of this exhibit you have written in ink a summary for May 16th, then May 17th, and continuing across to the right of the page May 18, May 19, May 21, May 21, May 22 and May 23 and at the foot of each of those summaries there is in ink total wins and lose for each day. Then I notice still below that for May 18 there is a summary entitled "May 18 Corrected" and that is in pencil. Is that also in your handwriting?

(Testimony of Louis H. Mooser, Jr.)

A. Yes. Let me try to explain. If you will note, the totals for the first eight days was pretty high. Mr. Kyne objected to it as not being a fair picture. I said, "All right, Mr. Kyne, we will go and look further." We went a little further and you will notice by having gone further it brought the average down considerably.

Q. My question relates to this column "May 18 Corrected" and my question is, was that summary of May 18th prepared by you on the same occasion that you prepared the other May 18th summary above?

A. No. That was not done until after this was done and all of it was done together but at that time you see the variation is very small. Now in this case there was quite a little difference. [2011]

Q. You are referring now to a corrected summary for May 20th? A. That is right.

Q. And that likewise is different from the original summary you made for May 20th, is that correct? A. That is correct.

Q. Now let us refer first to the income summaries which are the ones on the upper portion of this sheet for those two days. From what data was that information entered on the sheet?

A. From the slips of my summary from the cashier.

Q. Which you picked up?

A. I picked up myself.

Q. Now with respect to corrected May 18th

(Testimony of Louis H. Mooser, Jr.)

section, that was prepared, you say, at some later time?      A. That is right.

Q. And from what data or source were entries in that pencilled summary of May 18th obtained?

A. From data supplied to me by Mr. Kyne.

Q. What do you mean by data?

A. As I told you, one slip from a cashier might show a win of say \$30 and for some reason or other it developed it should have been \$30 or the recapitulation showed something else. You will notice where you brought those in, they were always in his favor.

Q. Well, you prepared the sheet, did you not?

A. I am telling you the source and I took them because I [2012] thought they were correct.

Q. You felt they were correct?

A. Oh, absolutely. He was cooperating in every way.

Q. You had no difficulty in obtaining information?      A. None whatsoever.

Q. And likewise from Mr. Slater?

A. Correct.

Q. In the lower portion you have taken a period May 21, 25, 26, 29 and 30, is that correct?

A. Correct.

Q. And you have set forth information there which you likewise obtained from the cashier's sheets?      A. Correct.

Q. And for the average for that week was less than the average for the first period; is that correct?

A. Right.



(Testimony of Louis H. Mooser, Jr.)

Q. Do you notice the amount by which that averaged?

A. \$118 was the first one, \$77.30 the second, so that the total average was brought down.

Q. Now this average that you compiled was based on win and lose figures of the poker sheets, is that correct, the cashier's sheets? A. Yes.

Q. And do you recall at this time what those cashier's sheets contained as to type of information? [2013]

A. Yes, they contained the amount of money that the cashier was given to start the day and how much he turned back, how much money was given players with which to play and how much was returned to him and up in the right-hand corner there was always a large amount of money that represented amounts that players owed the establishment.

Q. That section of the poker sheet, the amount of money that players owed, was not entered into win or lose computation?

A. I never took that into consideration at all.

Q. I show you prosecution's Exhibit 110, I believe Mr. Campbell also handed to you. I believe you stated your recollection was that sheet was smaller but the type of information was the same. Will you examine that and see whether that is your recollection?

A. I would say it was substantially the same.

Q. Now in computing the amount of the net

(Testimony of Louis H. Mooser, Jr.)

income of the 186 Club, did you make any allowances for rent paid for the premises?

A. Yes.

Q. And how did you make that allowance?

A. Well, that was paid by cash. All of their payments of expenses were deducted on their sheets.

Q. Did that enter into the win and lose figures?

A. Yes.

Q. Isn't it a fact that the rent of the 186 Club was paid by check?

A. I don't think so. [2014]

Q. Did you make an examination to determine that?

A. I can say this, nothing was paid by check. It was always cash.

Q. Did you determine how the rent was paid?

A. By cash, and everything else was paid by cash.

Q. For those particular days that you took as your sample, the days in May which I have read, was any rent paid on those particular days, if you recall?

A. I can't recall.

Q. If your computations here did not include any rent payments, then to that extent they would not correctly reflect the net income of the place, isn't that correct?

A. That's true.

Q. Do you know how the utilities for the place were paid?

A. Yes.

Q. How were they paid?

A. In cash.

Q. How did you determine that?

(Testimony of Louis H. Mooser, Jr.)

A. Because they were written right on the slips.

Q. On the poker sheets? A. Tickets, yes.

Q. And how did that enter into win or lose computation, do you recall?

A. Well, the win or lose was the amount of money that the cashiers turned in and the amount showed as win or lose was [2015] after all those expenses had been paid.

Q. And do you know whether on these particular days in May that you used as your sample there were any actual utility payments?

Mr. Campbell: I suggest that the record is the best evidence of that.

Q. Will you refer to the exhibit sheet and state whether in the days in May you find any utility payments?

A. There is nothing here that would show that.

Q. And if there were any utility payments on those particular days, then again your computation of net income would be erroneous, would it not?

A. But it is not.

Q. I say if there were any payments made on those days, it would be erroneous?

A. But all payments came out of there. Anything they paid came out of that money. I discussed that with Mr. Kyne regarding these expenses.

Q. You computed the net income by taking the net win and lose on these selected days in May, is that right? A. That is right.

Q. And your computation was based entirely on what happened on those days?

(Testimony of Louis H. Mooser, Jr.)

A. That is correct.

Q. So if on those days they had not paid any utility payments, [2016] then your computation would be erroneous, insofar as computing net income——

Mr. Campbell: Objected to as asked and answered three times.

Mr. Avakian: Asked but not answered, your Honor.

The Court: Objection sustained.

Q. You do not know at this time whether or not there were any utilities payments shown on these particular days?

Mr. Campbell: Same objection.

The Court: Same ruling.

Q. In making the computation which is reflected in prosecution's Exhibit 166, can you tell us whether or not at that time the 186 Club was paying any salaries to officers?

A. It was not, as I determined.

Q. As a matter of fact, the operators of the enterprise up to that time had been going on the theory it was a partnership rather than a corporation?

Mr. Campbell: Objected to as calling for his conclusion.

The Court: Objection sustained.

Q. Well, didn't you state in your report, Exhibit 167, that a partnership return had been filed on the advice of counsel?

Mr. Campbell: I will stipulate that is there.

(Testimony of Louis H. Mooser, Jr.)

Q. Now to the extent that the 186 Club may have paid salaries to officers, your computation of net income as reflected in Exhibit 166 would be incorrect, would it not? [2017]

Mr. Campbell: Objected to as argumentative, speculative and not within the scope of direct examination.

The Court: Objection sustained.

Mr. Avakian: Your Honor, it is within the scope of direct examination because this has been presented——

The Court: The objection has been sustained.

Mr. Avakian: And you won't hear me?

The Court: No.

Q. Mr. Mooser, the 186 Club was located in the back part of certain premises in which in the front part was an operation known as the Day-Night Cigar Store, is that correct? A. Yes.

Q. And the entrance to the 186 Club was through the cigar store? A. Yes.

Q. Isn't it a fact there was a single lease on those two premises? A. I don't recall.

Q. Did you ever see the lease? A. No.

Q. Did you examine the books of the Day-Night Cigar Store to determine whether the entire rent on the combined premises was being paid through the Day-Night Cigar Store?

A. I do not recall whether I did or not. I do not think so.

Q. I call your attention to prosecution's Exhibit 117, which [2018] is one of the books of ac-

(Testimony of Louis H. Mooser, Jr.)

count of the Day-Night Cigar Store, and particularly to an account in that book of the Day-Night Cigar Store entitled "186 Club," on which there is shown on December 31, 1943, a charge against the 186 Club in the amount of \$1500 as rent. Will you examine that? Does that refresh your recollection that the rent for the 186 Club proportionate premises was paid by the Day-Night Cigar Store and was charged on the books against the 186 Club?

A. The only thing, this comes in the period prior to the time you are speaking of.

Q. You were making an examination over what period?

A. This goes for the period in which the Silverman interests held forth and there was no information whatsoever concerning this or any other figure and the figures that were taken were those found in the corporation returns, so this would not mean anything.

Q. The Silverman interests terminated February 28, 1943?

A. That is correct.

Q. I call your attention to the fact that the entry I spoke to you about is December 31, 1943. Do you notice that?

A. But this actually covers all that money for that period.

Q. Do you notice it is December 31, 1943?

A. Yes.

Q. And that is within the period for which you were making your examination? [2019]

(Testimony of Louis H. Mooser, Jr.)

Mr. Campbell: Do you mean the entry in the book or what is behind the entry?

Mr. Avakian: I do not know what is behind the entry. I am telling what the entry in the book is, December 31, 1943, rent charges against 186 Club, \$1500.

The Court: What is your question?

Mr. Avakian: I do not think I put the question yet, your Honor; Mr. Campbell interrupted.

Q. This date, December 31, 1943, was within the period for which you made your examination?

Mr. Campbell: Objected to as immaterial.

The Court: Objection overruled.

Q. Do you understand the question?

A. Yes, I believe it is within the period.

Q. I will ask you again then this question—if the rent for the 186 portion of the premises was paid by the Day-Night Cigar Store to the landlord and was then charged against the 186 Club, that rent would not have been taken into account in the chart which you prepared as Exhibit 166, would it?

Mr. Campbell: Objected to as assuming a fact not in evidence.

Mr. Avakian: The book is in evidence, your Honor.

Mr. Campbell: The book does not so indicate.

The Court: Objection sustained.

Q. Can you refer me on prosecution's Exhibit 166 to any day [2020] listed there on which you found a record of a rent payment having been made?

(Testimony of Louis H. Mooser, Jr.)

A. No, I can't do that. This is almost eight years ago. I can't remember.

Q. Do you know whether or not there were any rent payments? A. I can't say.

Q. Would a determination as to the amount of rent have been proper and material in determining the amount of the net income of the place?

Mr. Campbell: Objected to as not within the scope of direct examination; incompetent.

Mr. Avakian: Well, your Honor, he has presented an analysis which he represents as net income. Aren't we entitled to show whether or not——

The Court: Objection sustained.

Mr. Avakian: ——he has omitted material matters?

The Court: Objection sustained.

Q. Does your chart, Exhibit 166, include any expense in the way of officers' salaries? A. No.

Q. Does it include any expenses as rent?

A. That I can't say.

Q. Do you know whether or not the utilities for the 186 Club portion of the premises were paid through the Day-Night Store?

A. I do recall that, yes. [2021]

Q. I show you prosecution's Exhibit 87A, which is the corporation income and declared value excess profits tax return for fiscal year beginning July 1, 1943, and ending June 30, 1944. I believe you testified on direct examination that the signature, Louis H. Mooser, was your signature?



(Testimony of Louis H. Mooser, Jr.)

A. Yes, I did.

Q. And that Mr. Kyne and Mr. Slater signed this return before you? A. That is right.

Q. And then I believe you said after it was so signed they took it away with them?

A. That is right.

Q. And then at some later time you testified, I believe, that you had a conversation with your superior, at that time Mr. Boland, regarding this return?

A. He called me in and showed it to me.

Q. Do you know approximately when that conversation was?

A. No, I can't say, but the return had not been filed very long.

Q. So it would have been shortly after the filing date of November 15, 1944?

A. That is right.

Q. I call your attention to the fact that the filing date of November 15, 1944, is the exactly same date on which you signed it as the party before whom the return was signed. Do you notice that? [2022]

A. That could be.

Q. You notice the two dates are the same?

A. Yes.

Q. And this was sworn to before you in the office of the Collector of Internal Revenue in San Francisco? A. As I recall, yes.

Q. And isn't it a fact that the return was left with you for filing on that occasion?

A. That is not a fact.

(Testimony of Louis H. Mooser, Jr.)

Q. Do you receive returns for filing in connection with the authentication of them?

A. Yes; sometimes.

Q. So apparently they took this away and came back the same day?

A. Was there payment made?

Q. It says, "Received with payment."

A. I would not be taking the return.

Q. They would walk over to the cashier's office?

A. Yes.

Q. That is in the same building, is it not?

A. Yes.

Q. Can you point to any particular portion of this return which Mr. Boland discussed with you on the occasion which you mentioned on your direct examination?

A. Yes, this Schedule 1. [2023]

Q. I believe you stated that the collector's office does not have jurisdiction of corporation returns except in instances where delinquent return is picked up, is that correct?

A. Yes.

Q. Does the collector's office have jurisdiction over individual returns and partnership returns?

Mr. Campbell: I think the question is misquoted. The question was jurisdiction as to audit.

Mr. Avakian: Well, I will modify the question to that extent. Now my question is, does the collector's office in San Francisco have jurisdiction over the audit of individual and partnership returns?

A. At that time only certain individuals, not partnerships or corporations.

(Testimony of Louis H. Mooser, Jr.)

Q. Now with respect to the 1943 partnership return of the 186 Club, a copy of which you said you saw during your examination before you picked up the corporate return covering a portion of the same period and after you advised the owners of the enterprise that they should file as a corporation rather than a partnership, did you make any recommendation to the effect that the individuals who were shown on the partnership return for that period receive any adjustment or refund in respect to that income?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained. [2024]

Q. Do you know whether any such adjustment or refund was made?

Mr. Campbell: Same objection; not within the scope of direct examination.

The Court: Objection sustained.

Mr. Avakian: Your Honor, I would like to be heard on that.

The Court: No, we will not take the time for that.

Mr. Avakian: I do not want to make an annoyance of myself requesting this, but I would like to be heard on some of these matters. Mr. Golden called my attention that these very same questions were put to Mr. Ezralow and your Honor permitted him to answer them.

The Court: The ruling will stand.

Mr. Avakian: No further questions.

(Testimony of Louis H. Mooser, Jr.)

Redirect Examination

By Mr. Campbell:

Q. In response to one of Mr. Avakian's questions he had you describe a conversation you had with Mr. Taffe, the attorney, wherein he stated that the reason for not filing on a corporation basis was because card-bearing members might demand an accounting of the profits or distribution of the profits. Will you state what is meant in California with relation to this type of operation, what a card-carrying member is?

Mr. Avakian: Objected to on several grounds—it is incompetent, irrelevant and immaterial. This witness is not qualified as an expert on that point on California law. [2025]

The Court: Objection sustained.

The Court: Any reason why this witness could not be excused?

Mr. Avakian: He may be excused.

(Witness excused.)

ROBERT W. MORGAN,  
a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. Will you state your name?

A. Robert W. Morgan.

(Testimony of Robert W. Morgan.)

Q. Where do you live?

A. El Cerrito, California.

Q. What is your business or occupation?

A. Revenue agent, San Francisco Division.

Q. How long have you been a revenue agent?

A. Six years today.

Q. Have you been stationed in the San Francisco division at all times?      A. That is correct.

Q. You say six years today?

A. Yes, sir, January 10, 1946.

Q. Are you also a certified public accountant, Mr. Morgan?      A. Yes, sir.

Q. Now, Mr. Morgan, in connection with your official duties as [2026] a revenue agent, were you assigned to the investigation of the personal income tax returns of the defendant, Elmer Remmer?

A. Yes, sir.

Q. And in connection with that assignment, did you make an examination, or did you examine the books and records, that is to say, such books and records as were made available for your examination—

Mr. Gillen: Objected to as leading and suggestive. I suggest the correct question would be in connection with that investigation what did you do.

The Court: Objection overruled.

Mr. Avakian: I object to "such books as were made available." It has implications, your Honor.

The Court: Objection overruled.

Q. (Continuing): —of the Day-Night Cigar Store?      A. Yes.

(Testimony of Robert W. Morgan.)

Q. Mr. Morgan, I am going to show you Exhibits 117, 117A and 117B, purporting to be the books of account of the Day-Night Cigar stand or Day-Night Cigar Store, and ask you if you examined those books in the course of your investigation?

Mr. Gillen: I move it be stricken out of the question the word "purporting." These were exhibits introduced by the government, by which they are bound.

The Court: Objection overruled.

Mr. Gillen: It is their exhibits, your Honor. [2027]

The Court: I know.

Mr. Gillen: We should get the testimony from the witness, not from Mr. Campbell's questions.

The Court: I think we are getting a little sensitive. Objection overruled.

Mr. Gillen: We have to object, we have a duty——

The Court: But we are wasting time.

The Court: I disagree. I do not think any inference is to be made from the use of the word—flyspecks.

Q. I show you plaintiff's Exhibit 119, return of William E. Kyne for the year 1943, and particularly therein to the schedule which is attached thereto, headed "Day-Night Cigar Store, 186 Eddy Street, San Francisco, California," and ask you if you examined that return in the course of your duties? A. I did.

Q. I also show you plaintiff's Exhibits 84, 85,

(Testimony of Robert W. Morgan.)

and 86, being partnership returns of income of the Day-Night Cigar Store for the calendar years 1944, 1945, and 1946, and ask you if you examined those?

A. I did.

Q. Have you, Mr. Morgan, at my request, prepared a summary statement of the assets and liabilities of the business known as the Day-Night Cigar Store? A. I have.

Q. Pardon me, may I finish the question—as of the following [2028] dates: December 31, 1943; December 31, 1944; December 31, 1945; December 31, 1946? A. I have.

Q. And what was the source of the material from which you compiled that statement of assets and liabilities?

A. The books before me, the 117 series.

Q. And also from the returns before you?

A. Yes, sir.

Q. And in addition to that, have you, at my request and direction, also placed upon that summary the net worth or capital accounts as reflected in the books of the Day-Night Cigar Store as of each of those dates? A. I have.

Q. I am going to show you plaintiff's Exhibit 164 for identification, together with two schedules annexed thereto, and ask you if that is the summary statement of assets and liabilities which you prepared at my request, and from the sources which you have just identified? A. It is.

Q. In preparing this document was anything else, any other documents or exhibits, which are

(Testimony of Robert W. Morgan.)

either in evidence or not in evidence in this case, utilized in its preparation? A. No, sir.

Mr. Campbell: This will be offered as plaintiff's Exhibit 164 in evidence. [2029]

Mr. Avakian: Your Honor, again simply for the purpose of obtaining clarification, we make the formal objection that the presentation of a summary representing the results in the opinion and conclusion and judgment of an expert witness is not a proper method of presenting the evidence, and again I state I think it is, but I know many courts differ in their rulings and I simply want clarification.

The Court: Very well. The exhibit will be admitted in evidence.

(Jury and alternate jurors admonished and recess taken at 4:00 p.m.) [2030]

Friday, January 11, 1952—10:30 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. MORGAN**

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Morgan, yesterday you had identified as plaintiff's Exhibit 164 the statement of assets and liabilities of the Day-Night Cigar Store as drawn



(Testimony of Robert W. Morgan.)

by you from Exhibits 117 series, Exhibit 119 and Exhibits 84, 85 and 86, is that correct?

A. Yes, sir.

Q. Now with regard to the figures that are set forth on this schedule or statement, that is, Exhibit 164, will you state whether or not any of these figures are adjusted figures or whether they are as appeared in the records to which I referred?

A. The figures all appeared in this 117 series, with the exception of certain figures that we obtained from the tax returns.

Q. As to bank balances, was it necessary for you to combine certain figures appearing in the 117 series?

A. Yes, sir, with respect to the year 1946 only. No general ledger was maintained for that year, so that we obtained the closing balance in cash account as of December 31, 1946, from cash receipts and disbursements book.

Q. And in arriving at the bank balances, you set forth the figures used and drawn from the 117 series of books in the two schedules annexed and made a part of Exhibit 164, is that correct? [2031]

A. That is correct.

Q. Reading from government's Exhibit 164, the net worth of the Day-Night Cigar Store as of December 31, 1943, \$17,785.40; as of December 31, 1944, \$39,494.37; as of December 31, 1945, \$30,390.47, and as of December 31, 1946, \$28,643.47. Did you also, at my request, place on this schedule the capital accounts as disclosed in the 117 series?

(Testimony of Robert W. Morgan.)

A. Yes, sir.

Q. I direct your attention to the fact that no capital accounts were shown as of December 31, 1946. Will you state whether or not the sets, that is to say the 117 series, disclosed capital accounts as of the year-end '46?

A. Those accounts were incomplete as of December 31, 1946, so that I didn't transcribe the balances.

Q. As of the end of each of the years, 1943 and 1944 and 1945, will you state if the profit and loss accounts for those years were closed into the capital accounts?

A. Not in all respects. Particularly with respect to the year 1945, I remember those accounts were not closed into the capital accounts.

Q. Will you state how that showed on the books as of the year 1945?

A. Profit and loss accounts both years remained outstanding, were not closed to the capital accounts. On that schedule before [2032] you I show that in total.

Q. In setting up these capital accounts, you have simply copied what was shown in the books?

A. I totalled those profit and loss and showed as one net figure.

Q. That is, you have totalled them in the individual accounts?

A. I totalled the balances of the individual accounts shown as one figure as of December 31, 1945.

Q. That is in the individual accounts?

(Testimony of Robert W. Morgan.)

A. That's right.

Q. And you have also placed here a total of all of the capital accounts as of the year-end of each of the years, 1943, 1944, and 1945, is that correct?

A. That is correct, sir.

Q. Now I direct your attention to the fact that in each of the year-ends, 1943, 1944 and 1945, the total amount shown in the books in the capital accounts exceeds the net worth of the business as disclosed in the statement of assets and liabilities set forth hereon. Can you state how that came about on the books?

A. I have prepared a schedule entitled "Reconciliation Net Worth From Books and Exhibit" and set forth that figure.

Q. And that is the schedule which you hand me? A. Yes, sir.

Mr. Campbell: I ask this be marked for identification.

The Clerk: 168. [2033]

Q. Showing you plaintiff's Exhibit 168 for identification—let me ask you first, these are your working papers? A. Yes.

Q. What was the source of the figures which you have utilized here?

A. The chief difference—

Q. No, the source of the figures—from what source did you obtain the figures?

A. Book figures, that is the 117 series and the tax returns, partnership returns.

(Testimony of Robert W. Morgan.)

Q. You say the partnership returns, Exhibits 84 to 86 and 119?      A. Yes, sir.

Mr. Campbell: This will be offered in evidence as Exhibit 168.

Mr. Avakian: In view of your Honor's rulings on the admissibility of summary prepared by the witness, we offer no objections.

The Court: Very well; the exhibit is admitted in evidence.

Q. Now, Mr. Morgan, will you explain the difference between the two accounts?

A. The chief difference is the first item called equipment or furniture and fixtures. The books, that is, the general ledger, 117 series, showed amount of \$10,000, whereas, in my exhibit I show an amount of \$2100. I used that figure because— [2034]

Mr. Avakian: Just a moment, your Honor—we get into the field of argument here. I have no objection as long as I am permitted to cross-examine—

The Court: Let me have the question and answer.

(Question and answer read.)

The Court: Objection overruled. You may answer.

A. I used that figure \$2100 because it is the amount on the 1946 partnership return. I disregarded the \$10,400 because that is the figure obviously that includes equipment and various other assets applicable to the 186 Club. No general ledger

(Testimony of Robert W. Morgan.)

was kept for the 186 Club and Mr. Slater stated to me——

Mr. Avakian: Just a moment—getting into hearsay.

Mr. Campbell: You can't say what Mr. Slater said to you.

Q. At any rate, you used the figure in the return, is that correct? A. That is right.

Q. Partnership return, in lieu of the one in the books? A. That's right.

Q. Now in that connection, and during the course of your investigation, did you see any books, general books, of the 186 Club? A. No, sir.

Q. Did you attempt to obtain any books or records of the 186 Club? A. Yes, sir. [2035]

Q. Did you, in the course of your investigation, find out whether or not books or ledgers were kept for the 186 Club?

A. I never located any and none were ever produced for me.

Q. In examining the books and records of the Day-Night Cigar Store, did you find whether or not certain of the expenses of the 186 Club were paid through the Day-Night Cigar Store?

A. That is correct.

Q. And in utilizing the furniture and fixture item from the partnership return of the Day-Night Cigar Store, rather than the amount shown in the books and records, did you have those facts in mind? A. Yes, sir.

Mr. Campbell: You may cross-examine.

(Testimony of Robert W. Morgan.)

Cross-Examination

By Mr. Avakian:

Q. Mr. Morgan, I believe you stated yesterday was the sixth anniversary of your employment with the Bureau? A. That is correct.

Q. Were you engaged in accounting work prior to that time? A. Yes.

Q. Will you tell us for whom and for what period of time?

A. I was employed by two certified public accounts in New York City in '35 and '40 until I went into the service of the United States Army.

Q. And in your experience in New York, were you engaged in doing work in connection with the preparation of tax returns? [2036]

A. That is correct.

Q. Now you stated that you were assigned to examine the returns of Mr. and Mrs. Remmer. Will you tell us approximately when that assignment was made? A. Approximately July, 1947.

Q. And what particular enterprises did you examine?

A. Well, I examined all the enterprises that we could ascertain had any connection with Mr. Remmer.

Q. Well, did you examine the Day-Night Cigar Store or did you examine the 186 Club?

A. Yes, sir.

Q. Did you examine the Menlo Club?

(Testimony of Robert W. Morgan.)

A. Yes, sir.

Q. Did you examine 110 Eddy Street?

A. Right.

Q. The B. & R. Smoke Shoppe?

A. That is right.

Q. Did you examine the 21 Club and San Diego Social Club?      A. No, sir.

Q. Or the 311 Club?      A. No, sir.

Q. Did you examine the Cal-Neva, Inc?

A. No, sir.

Q. Did you examine the Transit Smoke Shoppe?

A. Yes, sir. [2037]

Q. You examined the six San Francisco enterprises that I have just named, which have been mentioned in the evidence?

A. That is right.

Q. And you said that you made those examinations in conjunction with other agents, I believe. Will you state what other agents you were working with in that examination?

A. During the examination I was associated with an agent by the name of Gerald Peel, Lynn Harkness, Ray Weaver and Farley N. Gould of the Oakland office.

Q. Did any other agents work on this case with you?

A. No, Mr. Barkley examined Cal-Neva, Inc.

Q. Did you work with Mr. Miner, who was on the stand here?      A. No, sir.

Q. Was Mr. Whiteside associated with you at any time?

(Testimony of Robert W. Morgan.)

Mr. Campbell: I thought this was a preliminary question. He asked who he was associated with and I think it is immaterial.

The Court: He may answer.

A. I did not work with Mr. Whiteside.

Q. Do you know whether or not he was assigned to the case?

Mr. Campbell: I object to that.

The Court: Objection sustained.

Q. In connection with the preparation of Exhibit 164, did you consult with any of the other gentlemen while you were preparing either the exhibit or the underlying material for it? [2038]

Mr. Campbell: Objected to as immaterial.

The Court: Objection overruled.

A. I received instructions from Mr. Campbell only.

Q. What were your instructions from Mr. Campbell?

A. To prepare statement of assets and liabilities from the books and returns.

Q. Just that general instruction? A. Yes.

Q. You did not consult with him as to particular matters that arose in the preparation of it?

A. I may have asked him several questions.

Q. Do you know what particular items in Exhibit 164 you discussed with him?

Mr. Campbell: Objected to as immaterial.

The Court: You may answer the question.

A. One I remember was the amount I should use for the equipment.



(Testimony of Robert W. Morgan.)

Q. You are speaking now of the item of furniture and fixtures which you show on 164 as being \$2100 on December 31, 1943?

A. That is correct.

Q. Now you found in the books a figure of \$10,400, had you not? A. That's right.

Q. And you discussed with him which of those two figures you should use?

A. Yes, sir. [2039]

Q. And did he state to you any opinion as to which you should use?

Mr. Campbell: I am going to object, if the Court please.

The Court: You may answer.

A. He told me which one to use.

Q. He told you to use the \$2100 figure, is that right? A. Yes.

Q. Is it not true that if you would have used \$10,400 figure shown in the books the pending net worth shown on Exhibit 164 would have been increased by amount of \$8300?

A. That is right.

Q. You said you found this \$2100 in the 1946 partnership return, is that correct?

A. That is correct.

Q. And that is Exhibit 86?

A. I don't know.

Q. Do you have it before you?

A. No, I do not.

Q. Will you show me on Exhibit 86, partnership return for 1946, the item which states that the total

(Testimony of Robert W. Morgan.)

amount of furniture and fixtures on hand on December 31, 1943, was \$2100?

A. The partnership return makes no such statement.

Q. The return does state the amount on hand at the end of 1946 is \$2100, does it not?

A. I wouldn't say it stated. That is the only figure listed [2040] in the depreciation schedule.

Q. And that is for the year 1946, is that correct?

A. Yes.

Q. Exhibit 164—do you have it before you?

A. No, I do not.

Q. I will hand you Exhibit 164 and also hand you a sheet of paper to assist you in any computation you need to make. Do you have a pen or pencil with you? A. Yes.

Q. In Exhibit 164 you show the net worth of the Day-Night Cigar Store at the end of 1946 is \$28,643.47, do you not? A. Yes, sir.

Q. And at the beginning of this three-year period, that is at the end of 1943, you show the net worth of \$17,784.40, do you not? A. I do.

Q. Will you compute the difference between those two amounts for us? A. \$10,858.07.

Q. Now if, instead of using the furniture and fixtures item of \$2100, which Mr. Campbell told you to use on December 31, 1943, you had used the figure of \$10,400 that you saw in the books, will you compute for us what the increase in net worth would have been from 1943 to 1946? Will you make that computation? [2041]

A. There was no increase.

(Testimony of Robert W. Morgan.)

Mr. Campbell: May we have the question read?

(Question read.)

Mr. Campbell: Does that contemplate \$10,400 throughout the period or simply at the beginning or end of the period?

Mr. Avakian: I think my question is clear.

Mr. Campbell: I object to the question as being incompetent and also unintelligible.

The Court: He may answer the question if he can.

A. The question does not make sense to me.

Mr. Avakian: Let me reframe it.

Q. Will you make a computation of what the net worth would be at December 31, 1943, if you substituted in Exhibit 164 the figure of \$10,400 that you found in the books for furniture and fixtures, instead of the figure of \$2100 that Mr. Campbell told you to use?

A. I would arrive at net worth as of December 31, 1943, of \$26,085.40.

Q. And then would you tell us what, using that figure as net worth of 1943, would you tell us what the net worth increase would be from then to the end of 1946?

Mr. Campbell: Objected to as incompetent, if the Court please, because if that figure is changed in this size, the figure of \$2100 to \$10,400, then the comparison which he is seeking to draw from this witness must include an adjustment [2042] of the same item of furniture and fixtures at the end of the

(Testimony of Robert W. Morgan.)

period. In other words, there is a \$2100 figure used throughout the period or \$10,400 throughout the period and this question does not contemplate that.

The Court: Does this question contemplate the use of \$10,400 throughout the whole period?

Mr. Avakian: No, because the only evidence of furniture and fixtures at the end of 1946 is \$2100.

The Court: Didn't the witness testify he used 2100 throughout the period?

Mr. Avakian: That is right, but he also testified that although he found no entry in the books of a different figure at the end of 1946, he did find one at the beginning of the period 1943.

The Court: If he testified he used 2100 throughout the period, I think your question should be confined to what would be the result if he used \$10,400 throughout.

Mr. Avakian: There is no evidence of 10,400 at the end of 1946. That is my point. Here is the particular asset shown at the beginning of the period on the books as a high figure and the only entry we have in the evidence at the end of the period is a low figure and what Mr. Campbell had this witness do was to take the low figure at the end and instruct him to use it at the beginning, although there is not a single bit of [2043] anything in the record that that was the figure at the beginning of the period, in lieu of what the books show.

The Court: There is no evidence of this figure \$10,400.

Mr. Avakian: He has testified——

(Testimony of Robert W. Morgan.)

The Court: Let him use that.

Mr. Avakian: As of December 31, 1943; there is no evidence of \$10,400 as of 1946 however. The only figure that we have——

The Court: Objection sustained.

Q. Mr. Morgan, did you find in all of the materials that you used, did you find any item for furniture and fixtures at the end of December 31, 1946, that is at December 31, 1946, other than \$2100 figure which you used?

Mr. Campbell: Counsel just stated very emphatically to the Court that there was no figure anywhere.

Mr. Avakian: Will you stipulate that is a fact?

Mr. Campbell: No, I do not stipulate.

The Court: Let me have the question.

(Question read.)

Mr. Campbell: I object to the question in the form it is put because it is a type of compound question.

The Court: He may answer the question.

Q. Do you recall the question, Mr. Morgan?

A. Well, this whole thing is clear in my mind. I don't know whether it is in yours. The only figure that appears in the [2044] books throughout the entire period is \$10,400.

Q. Does that appear as of December 31, 1946?

A. It appears in the record for the general ledger, which is the only general ledger which we have in the entire period.

Q. Would you show that to me?

(Testimony of Robert W. Morgan.)

Mr. Campbell: May the record show that the witness has referred counsel to Exhibit——

Mr. Avakian: I will make that clear.

Mr. Campbell: I think the record should show at this point the exhibit and page number which the witness is showing.

Mr. Avakian: I am going to state that.

The Court: Go ahead.

Q. You have handed me plaintiff's Exhibit 117 and have pointed particularly to a page entitled "Equipment Account," have you not?

A. Yes, sir.

Q. And there is one entry on that page, is that right?      A. Yes.

Q. And that shows March 1, 1943, \$10,400, balance \$10,400, is that correct?      A. Correct.

Q. And there are no further entries following that date, is that right?      A. That is right.

Q. I believe you testified, did you not, that the posting into [2045] the general ledger was not complete in 1946?      A. That is correct.

Q. So you don't know for a fact whether there were any changes in this account during 1946, do you?      A. I do.

Q. You do know there were no changes?

A. That is correct.

Q. You mean that you know there are no entries in the account?      A. Yes.

Q. But in view of the fact and in view of your statement that the postings were not carried into the general ledger during the year 1946, it is pos-

(Testimony of Robert W. Morgan.)

sible, is not not, that there may have been changes in the furniture and fixture account, even though they were not carried into the ledger?

A. I do not think so. I analyzed the cash receipts and disbursements, which is the only record we had of 1946, and they showed no acquisitions or sales of furniture or fixtures.

Q. Now if there were no changes, will you state why you did not use the \$10,400 figure throughout your exhibit?

A. That figure did not seem realistic, based upon information I had available during my examination.

Q. You said that you discussed with Mr. Campbell which of those two figures to use, is that correct?

A. That is correct.

Q. Now when you said that you had information available to you, [2046] are you referring to any information that is in evidence here?

A. Yes, sir.

Q. Would you refer me to the evidence?

A. Mr. Kyne's testimony?

Q. What was Mr. Kyne's testimony you used as a basis?

A. My recollection is he stated when he bought the business located at 186 Eddy Street in 1943 from Mr. Silverman, he paid approximately \$22,000 of which he allocated approximately 16 thousand to 186 Club, which was on the same premises but just back of the store in front known as the Day-Night Cigar Store. That would leave a balance

(Testimony of Robert W. Morgan.)

of approximately six thousand dollars to be allocated to the inventory of other assets of the Day-Night Cigar Store. Inasmuch as this \$2100 was listed on the 1946 returns, it seemed to be a reasonable assumption of that value, one which would be more realistic than \$10,400, which obviously included the value of assets which should have been applied to the 186 Club.

Q. The testimony of Mr. Kyne that you refer to was his testimony as to the amounts paid at the time these two businesses were purchased, approximately March 1, 1943? A. Yes, sir.

Q. And from his testimony you concluded that approximately six thousand dollars of what was paid should be allocated to the Day-Night Cigar Store business? A. Yes, sir. [2047]

Q. However, as of December 31, 1943, your Exhibit 164 shows total assets of the Day-Night Cigar Store of close to \$18,000, is that right?

A. That is correct.

Q. So that between the purchase of the store around March 1st of 1943 and December 31, 1943, it is clear to you, is it not, from your examination, that there were substantial additions to the assets of that business? A. That is correct.

Q. Do you know whether or not any of those additions included furniture and fixtures?

A. No, sir.

Q. Can you point to any testimony in this record here to the effect that it did not include any additional furniture and fixtures?



(Testimony of Robert W. Morgan.)

Mr. Campbell: I object to the question in that form.

The Court: Objection sustained.

Q. Did you hear any testimony in this case or see any exhibits in this case which would indicate to you that this increase in the assets of the Day-Night Cigar Store, from approximately six thousand to the figure that you concluded was correct on March 1, 1943, to the figure approximately 18 thousand dollars that you concluded correct as of December 31, 1943, did not include furniture and fixtures?

Mr. Campbell: Again I object to the form of the question. [2048]

The Court: Let us have the last question.

(Question read.)

The Court: Objection sustained.

Q. Mr. Morgan, in preparing Exhibit 164, with the exception of this furniture and fixture item we have been discussing, have you included in your summary all of the material contained in the books relative to the particular assets and liabilities which are set forth in Exhibit 164?

A. To the best of my knowledge.

Q. You are quite satisfied you have not omitted anything? A. Yes, sir.

Q. Will you show me the particular pages of the books from which you obtained the data labelled "Net Worth Accounts of the Various Partners" as set forth in Exhibit 164?

(Testimony of Robert W. Morgan.)

A. I believe you have the general ledger.

Q. It is in the general ledger, is it?

A. Yes, sir.

Q. You have the sheets in question?

A. Yes, sir.

Q. Did you also use Exhibit 117B in that connection?      A. No, sir.

Mr. Campbell: May the record show what sheets he is referring to?

Mr. Avakian: I will come to that.

Mr. Campbell: The record should be done at the time the [2049] question is answered.

The Court: The question was submitted and no answer.

Mr. Campbell: Then he went on to another.

Mr. Avakian: No, I asked him if he used 117B also and he said no.

The Court: You asked if that is the ledger and pages but you did not receive from the witness the answer as to the pages.

Mr. Avakian: Well, your Honor, preliminarily—

The Court: Let us not waste time on frivolous things.

Mr. Golden: Well, Mr. Campbell started it.

The Court: Easy, please.

Q. Will you describe the particular pages in Exhibit 117 that you used? Do they have a label on them?

A. They have the name, but no page number.

(Testimony of Robert W. Morgan.)

Q. The name of the particular partner, is that it? A. Yes, sir.

Q. Is there more than one page?

A. Yes, sir.

Q. Would you state the names of each of the pages that you used in connection with the information set forth in the capital accounts on Exhibit 164?

A. They are the same as I have noted on Exhibit 164.

Q. That is William E. Kyne Investment Account? A. Yes. [2050]

Q. William E. Kyne partner account?

A. Yes, sir.

Q. Sylvan Lando? A. Yes, sir.

Q. And E. Remmer, is that correct?

A. Yes, sir.

Q. Did you note that accounts of the same names were carried for the year 1946 in Exhibit 117B?

A. Yes, sir.

Q. I believe you stated that you did not use the information from 117B in preparing your exhibit?

A. That is correct.

Q. In Exhibit 164 for Sylvan Lando you show the figure \$3927.78 as the amount of his personal account of December 31, 1945. Is that the figure you find in Exhibit 117 on the page that bears his name?

A. Yes, sir.

Q. As of what date was that entry made?

A. There are two entries composed of that balance.

Q. What is the date?

(Testimony of Robert W. Morgan.)

A. One entry is dated December 31, 1944, in amount of \$1092.52. The second entry is dated May 31, 1945, in amount of \$2835.27.

Q. The last entry you have there is May 31, 1945? A. Yes.

Q. Isn't it true, Mr. Morgan, that in order to correctly show [2051] the amount of the capital account of a partner at the end of any particular year, you should credit his account with his share of the profit for that year or charge his account with his share of the loss for that year, as the case may be?

Mr. Campbell: Objected to as calling for opinion and conclusion, not within the scope of direct examination.

The Court: You may answer the question.

A. That is customary procedure.

Q. Did you not find in Exhibit 117B the amount of Mr. Lando's capital account on January 1, 1946, after the crediting to him of his share of the profit for 1945? A. Yes, sir.

Q. And what is the amount of his capital account at that time?

A. There are two entries on this sheet, one dated January 1, 1946, shows balance \$3927.78. There is an entry below it, without date, in amount of \$897.61.

Q. Under proper accounting procedure, as you have just testified, the 1945 share of profits to be included in computing the 1945 closing capital account, will you tell us then in your judgment, as an accountant, what is the correct amount of Mr. Lando's capital account at the end of 1945? The figure

(Testimony of Robert W. Morgan.)

shown on Exhibition 164 or the figure you have just read from the book?

A. The reason I didn't—

Q. (Interrupting): Can you answer the question first and give your reason afterwards. [2052]

(Question read.)

A. In my opinion neither one.

Q. In your opinion neither one, is that what you said? A. That is correct.

Mr. Campbell: You were told you could give your explanation.

Mr. Gillen: Did the gentleman say either or neither?

A. Neither. The reason I didn't make any computations on this schedule is Mr. Campbell instructed me to place here only balances on the books.

Q. Well, you have a number of entries here which are not balances on the books, isn't that true?

A. Some from the returns, yes.

Q. Did he instruct you in this particular case you should not go into other material to determine the correct amount of the capital account?

A. No, sir.

Q. Incidentally, is Mr. Campbell an accountant, as far as you know?

Mr. Campbell: I will stipulate I am no accountant, Mr. Avakian.

A. Would you like me to give you a further explanation?

(Testimony of Robert W. Morgan.)

Mr. Avakian: I think I have your explanation?

Mr. Campbell: If he has a further explanation, I think he is entitled to give it. [2053]

Mr. Avakian: If it is an explanation—if it is a volunteer statement, that is a different matter.

A. Well, here I think, as I gather what your objection is to the figure I used for Mr. Lando's balance of December 31st is that I did not include his share of the profit for that year.

Mr. Avakian: That is right.

A. However, you will note in the last entry on this 164 I have shown amount which I have entitled "Income and Expenses Accounts not Closed Out as of December 31, 1945," in amount of \$2667.36, one-third of which is approximately, but not quite, the amount shown as his share of distributive net income in 117B. In other words, where I was taking the balances here as shown on the books, the profit and loss accounts as of December 31, 1945, were not closed out, the partnership accounts, therefore, I did not make any distribution.

Q. Did you not find in 117B, Mr. Lando's personal account, an amount which does represent the balance at the end of 1945, with the inclusion of his share of 1945 income?

A. It purports to be.

Q. But you didn't use it, is that correct?

A. That is correct.

Q. In your list of assets you have an item of "Accounts Receivable 186 Club." Will you explain to us what that particular asset item represents?

(Testimony of Robert W. Morgan.)

A. From examination of the records it appears that the Day-Night [2054] Cigar Store paid certain bills for the 186 Club. The mechanics was to issue checks on the bank account of the Day-Night Cigar Store and charge them to an account receivable entitled 186 Club. It then appears certain cash was received from the 186 Club. The mechanics there was to deposit those sums in the bank account of the Day-Night Cigar Store and credit to the account entitled 186 Club.

Q. In other words, the Day-Night Cigar Store paid certain bills on behalf of the 186 Club and then received cash in reimbursement?

A. That is correct.

Q. Did your examination show the types of bills that the Day-Night Cigar Store paid for the 186 Club?

A. I noticed certain entries, such as social security taxes, rent, certain accounting bills except, probably, Mr. Maundrell's services as accountant.

Q. Were there any utility bills?

A. I believe there were.

Q. Did you hear the testimony of Mr. Mooser yesterday, that it was his recollection that the 186 Club paid utility bills in cash?

Mr. Campbell: Objected to—the record speaks for itself. That is not my understanding.

The Court: Objection sustained.

Mr. Avakian: On the ground that was not Mr. Mooser's [2055] testimony?

(Testimony of Robert W. Morgan.)

Mr. Campbell: I object, the record speaks for itself.

Mr. Avakian: What record, the transcript or the books?

The Court: I do not think the question is proper on any theory. This witness is not here to pass on any testimony.

Mr. Avakian: This witness has made an examination from which he can give us particular facts. Another representative of the government gave an inconsistent statement.

The Court: The objection is sustained.

Mr. Avakian: Your Honor, may I call your attention to the fact that this witness, in his testimony here, has relied on testimony he heard; for example, testimony of Mr. Kyne, and used that for the basis of his exhibit.

Mr. Campbell: No, no.

The Court: Objection sustained.

Mr. Avakian: Your Honor, I am at a loss to know why the objection is sustained. Will somebody enlighten me, so I will know how to proceed?

The Court: You may proceed if you want to.

Mr. Avakian: I certainly want to.

The Court: Well—

Mr. Avakian: If the basis of the objection and sustaining it is that my statement of the evidence was not correct, I would like to read to the witness and ask him if he heard the [2056] following testimony of Mr. Mooser yesterday—



(Testimony of Robert W. Morgan.)

The Court (Interceding): The objection is sustained.

Mr. Avakian (Reading): Question——

Mr. Campbell: I am going to object.

The Court: I am going to object to your going into the same subject.

Mr. Avakian: I thought possibly that was the basis for the ruling.

The Court: I told you the objection was sustained.

Mr. Avakian: But the objection is on several grounds, but I do not know on what ground it is sustained.

The Court: My idea is that this witness is not here to pass on credence of another witness' testimony. That is for the jury.

Mr. Avakian: But he is here to testify to what the facts were.

The Court: The objection is sustained on the grounds I have stated.

Q. The fact is that utility bills of the 186 Club were paid by the Day-Night Cigar Store, is that correct?      A. I notice it was in 1946.

Q. And those bills, after being paid by the Day-Night Cigar Store, were charged to the 186 Club, is that right?

A. There were no general ledger entries kept in 1946.

Q. You found charges to the 186 Club and reimbursements as the [2057] basis for what you set forth in 164?      A. Yes.

(Testimony of Robert W. Morgan.)

Q. That was a running account? A. No.

Q. Was it going in one direction only?

A. No, I obtained my entries from cash receipts and disbursements.

Q. And that showed charges from time to time from the Day-Night Cigar Store to the 186 Club?

A. Yes.

Q. And from time to time it shows the 186 Club paid the Day-Night Cigar Store for those?

A. Yes, sir.

Q. Did your examination show that the Day-Night Cigar Store made a rental charge against the 186 Club?

A. I do not know if that terminology is correct. There is a page in there entitled 186 Club in which certain entries were made for rent.

Q. Are you confused as to my terminology?

A. Yes.

Q. I use the word "rent."

A. No, I was confused by the other part of the question.

Q. Well, so there will be no confusion—the Day-Night Cigar Store did charge rent to the 186 Club?

A. I can say that. [2058]

Q. Do the books indicate whether rent was for the premises only or whether it might also have included furniture and fixtures?

A. There is no indication with regard to furniture and fixtures.

Q. You stated earlier that one of the reasons for using the figure of \$2,100 for furniture and fix-

(Testimony of Robert W. Morgan.)

tures on December 31, 1943, rather than the figure of \$10,400 used in the book, was your conclusion, from various circumstances that came to your attention, that of the total purchase price paid for the two businesses, only six thousand should be allocated to the Day-Night. Did you conclude, as a part of that assumption then, that the furniture and fixtures must have been purchased for the 186 Club rather than the Day-Night Cigar Store?

Mr. Campbell: Objected to as argumentative.

The Court: He may answer the question.

A. I did not conclude the 186 Club purchased any furniture and fixtures.

Q. What happened? What is your conclusion as to what happened in regard to the \$10,400 shown in the books for furniture and fixtures?

A. I concluded that that was an amount which also included furniture, fixtures, good will, as applicable to the 186 Club.

Q. Did you find anything that indicated that that included good will? [2059] A. No.

Q. You know, do you not, from your examination of these enterprises, that the 186 Club did use some furniture and fixtures? A. Yes, sir.

Q. I will hand you the returns of the 186 Club, prosecution's Exhibits 88, 88-A and 87-A. Have you examined those returns in connection with your examination? A. Yes, sir.

Q. On any of those returns was any depreciation claimed with respect to the furniture and fixtures?

(Testimony of Robert W. Morgan.)

A. I see no indication there were any charges for depreciation.

Q. You find no deduction for depreciation?

A. No, sir.

Q. You stated earlier that you found a record during the year 1946, the Day-Night Cigar Store paid some utility bills for the 186 Club?

A. That is right.

Q. Can you tell from examination of the books whether that was also true during 1944, and 1945?

A. The first entry I see for anything of that nature is entitled, "Light, Gas and Power," December 31st, and charged to 186 Club at \$325.41.

Q. What year? A. 1943. [2060]

Q. 1943 is the first item, and what was that for? Will you name those items again?

A. Light, gas and power.

Q. And then did you find other entries subsequent?

A. Subsequent to that date, yes.

Q. Right on through into 1946? A. Yes.

Q. Did you likewise find rent during the entire period?

A. There is a charge December 31, 1943, rent \$1,500, and subsequent entries.

Q. Subsequent entries throughout the period?

A. Yes, sir.

Q. And do you find that throughout all three of these years payments were made by the 186 Club to the Day-Night Cigar Store from time to time in respect to those charges?

(Testimony of Robert W. Morgan.)

A. I notice credits to the 186 Club account on the cash book, which I assumed to be cash received by the Day-Night Cigar Store for account of the 186 Club.

Q. And do you notice those throughout all three years? A. Yes, sir.

Q. The amounts that you have shown in Exhibit 164 as "Account Receivable 186 Club" is the balance which the 186 Club owed to the Day-Night Cigar Store at the end of each year indicated on your Exhibit 164, is that correct?

A. Yes, sir. [2061]

Q. But during the year there were charges made and payments made that resulted in that balance?

A. That is correct.

Q. And that shows then that on December 31, 1943, the 186 Club owed the Day-Night Cigar Store \$4,878.58? A. That is correct

Q. And on December 31, 1944, the 186 Club owed the Day-Night Cigar Store \$9,538.04?

A. Yes, sir.

Q. And December 31, 1945, the 186 Club owed the Day-Night Cigar Store \$3,743.50?

A. Yes, sir.

Q. And on December 31, 1946, your calculation, as reflected in the attached Schedule 2, showed that the 186 Club owed the Day-Night Cigar Store \$3,572.67? A. Yes, sir.

Q. And the amount of that indebtedness of the 186 Club to the Day-Night Cigar Store is listed by you as one of the assets in computing this net worth set-up? A. That is correct.

(Testimony of Robert W. Morgan.)

Q. You have an item of prepaid licenses and taxes. Will you find the particular page or pages in Exhibit 117 showing the amount of those figures?

A. I have it.

Q. You have showed me Exhibit 117, page entitled "Prepaid [2062] Licenses and Taxes." Will you tell me what the amount shown in the book is for December 31, 1943, the balance on that date?

What is the amount shown in the book?

A. \$344.10.

Q. Will you point that out to me? That is an entry as of date October 25, 1943.

A. I might point out it is very difficult to tell which year these entries belong.

Q. The plain fact is that you made a mistake in amount of \$110?

A. I may have but I cannot tell whether that is for the year.

Q. Doesn't that exhibit show below the 344 figure another payment of 1943 of \$110?

A. If that belongs to 1943, yes, sir.

Q. Well, the 1944 entries don't start until later, do they?

A. As I say, these dates have no years marked after them.

Q. Well, you find the year 1944 entered for the first time two entries below it, do you not?

A. That is right. I assume you are correct.

Q. So in preparing your exhibit you made a mistake of \$110, is that right?      A. Yes.

(Testimony of Robert W. Morgan.)

Mr. Avakian: I am just trying to get the facts, not being critical.

A. The books are not kept very clearly. They should place the [2063] year after every entry.

Q. Incidentally, do you know who kept this book? A. No, I do not.

Q. Mr. Slater, was it not?

Mr. Campbell: Objected to—he said he didn't know.

The Court: He said he didn't know.

Q. I am asking if you know it was Mr. Slater?

The Court: He said he didn't know. Objection sustained.

Mr. Avakian: On cross-examination I can refresh his recollection, your Honor.

The Court: Objection sustained.

Q. Did you discuss this book with Mr. Slater?

A. I may have.

Q. Was he the bookkeeper?

A. My understanding was he was the public accountant who supervised the records. I am quite sure he did not make all the entries in these books.

Q. Did he make some of them?

A. He probably made some of them.

Q. He had general supervision?

A. Yes, sir.

Q. Do you know who else made entries in this book beside Mr. Slater? A. No, sir.

Q. So far as you know, Mr. Remmer never made entries in the [2064] book, did he?

Mr. Campbell: Objected to, it is argumentative.

(Testimony of Robert W. Morgan.)

The Court: He said he didn't know. Objection sustained.

Q. You said that you had some discussions with Mr. Slater. Do you know if Mr. Slater is now living? A. I understand he is dead.

Q. Do you know approximately when he died?

A. No, sir.

Q. He was still living in 1947 when you were assigned to this case?

A. It must have been some time in '47.

Q. But you did talk to him during the time you were investigating? A. Yes, sir.

Q. During the course of your investigation were these different books that you have referred to in preparing Exhibit 164, namely Exhibits 117, 117A and 117B, were those books of the Day-Night Cigar Store made available to you during your investigation? A. Yes, sir.

Q. Were they turned over to you promptly on your request for them? A. Yes, sir.

Q. Did you take them from the premises of the Day-Night Cigar Store?

A. Certain records were given to me at 50 Mason Street and [2065] others were turned over to me by Mr. Ezralow, who had obtained them.

Q. Some of these records you obtained from Mr. Ezralow, is that correct?

A. That is right.

Q. Do you know whether these particular ones were obtained from him?

A. I do not recall which ones.



(Testimony of Robert W. Morgan.)

Q. Do you remember from what particular individual you obtained the records at 50 Mason Street? A. Mr. Kyne and Mr. Maundrell.

Q. Do you remember approximately when that was? A. Which records?

Q. The records which you obtained from those two gentlemen?

A. We obtained records whenever we requested them, which would be at any time within our examination.

Q. What period of time would that cover?

A. 1947 to approximately April, 1949.

Q. 1947 to April, 1949?

A. Yes, sir.

Q. And you said that during that period you were given books and records as you requested them?

A. And we returned some of them during that time.

Q. Did you take away from the premises any of the records which you obtained from Mr. Kyne and Mr. Maundrell? [2066] A. Yes.

Q. And took them to your office in the Bureau of Internal Revenue? A. Yes, sir.

Q. Did you make out any receipts to Mr. Kyne or Mr. Maundrell with respect to those records?

A. Whether or not, I don't recall.

Q. If you made them, would you have copies of them?

A. I have not seen any since I have been here.

Q. At the time you obtained these records from

(Testimony of Robert W. Morgan.)

Mr. Kyne and Mr. Maundrell, did you make any statement to them to the effect that you would return them on request?      A. Yes.

Q. You did state that you would, is that request?

A. If they requested them, we would return them.

Q. During this trial have you seen here in this building, in the possession of the prosecution, any of those records which you obtained from Mr. Kyne and Mr. Maundrell?

Mr. Campbell: Oh, I am going to object.

The Court: Oh, he may answer the question.

A. Yes, sir, I have seen them.

Mr. Avakian: No further questions.

(Jury and alternate jurors admonished and noon recess taken at 11:45 a.m.) [2067]

January 11, 1952, 1:00 P.M.

(Defendant present with counsel.)

(In the absence of the jury.)

(NB 334, P. 47-68.)

1:50 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

## Redirect Examination

By Mr. Campbell:

Q. Mr. Morgan, on cross-examination Mr. Avakian called your attention to the corporate returns of the 186 Club and asked you if there was set forth thereon any depreciation schedule or reference to furniture and fixtures. Will you examine these returns, which are Exhibits 87, 87A, 88 and 88A, and state whether or not these returns show any details of income or deductions other than, I think in some instances, officers' salaries?

A. The only information I see on these returns is an item called "Gross Take," from which is deducted administrative salaries to arrive at the net income.

Q. Those are the only figures appearing on the returns? A. Applicable to the income.

Q. Will you state whether or not you observe any reference on any of these returns to any deductions other than administrative salaries?

A. No, sir.

Mr. Campbell: That's all. [2068]

Mr. Avakian: No further questions. May it be

understood in excusing Mr. Morgan we would like to have him remain subject to further cross-examination.

Mr. Campbell: Yes, he will be in attendance throughout the trial.

RAY A. WEAVER

a witness on behalf of the government, having been previously sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. Will you state your name?

A. Ray A. Weaver.

Q. Where do you live, Mr. Weaver?

A. San Francisco, California.

Q. What is your business or occupation?

A. I am special agent of the Intelligence Division of the Bureau of Internal Revenue.

Q. How long has that been your occupation?

A. About ten years, except for about 2½ years in the army.

Q. You are a certified public accountant, Mr. Weaver?      A. Yes.

Q. And will you relate briefly and generally your accounting experience and background, including your accounting education?

A. I studied accounting in college and received a bachelor's degree.

Q. What college?

A. University of Pittsburg. Took some graduate work at Northwestern [2069] University where I

(Testimony of Ray A. Weaver.)

received a Master Degree in business administration. I had a year of private accounting with a subsidiary of Paramount Publications in Chicago. I was in practice on my own account for about a year in the town of Emaus, Pennsylvania. I taught accounting and related subjects for about four years in several colleges.

Q. Will you name those colleges?

A. Lafayette College, Easton, Pennsylvania; William Penn, Oskaloosa, Iowa; Whitworth College, Spokane, Washington, and Northwestern University in Evanston, Illinois.

Q. Did you go directly from that teaching experience into the Intelligence Unit?

A. No, I went into the Internal Revenue agent's office first.

Q. For how long a period were you there?

A. About six years.

Q. Do you recall when you first entered government service?      A. July 1, 1935.

Q. So that as between your service in the Revenue agent's office and Intelligence Unit and aside from your service in the army, you have been continuously in government employment since 1935, is that correct?      A. That is correct.

Q. Your army experience, of course, was also government experience.

A. That is correct. [2070]

Q. Incidentally, what is your position in the Intelligence Unit?

(Testimony of Ray A. Weaver.)

A. Special agent, assigned to assist in reviewing reports.

Q. As a special agent of the Intelligence Unit, will you state generally the nature of the duties of that office?

A. Generally that office makes investigations of all cases involving any alleged or suspected fraud against the revenues of the United States, concerning all possible tax evasions, with the exception of those relating to alcohol tax violations.

Q. Do they also include narcotic violations and customs violations—you do not handle?

A. No. Those are additional exceptions, that is true. Most of the work, of course, pertains to income tax violations.

Q. In connection with the handling of investigations relating to income tax violations, will you state generally the procedure; that is to say, whether or not such investigations are conducted jointly with any other agencies or bureaus?

The Court: That means his duties has to do with alleged fraud cases, alleged violations?

Mr. Campbell: Yes, I will use the word "alleged" instead of purported.

Q. In relation to these alleged violations of the Internal Revenue laws, will you state generally whether you work in conjunction with representatives of other agencies who are also assigned to those duties?

A. Yes, on all income tax cases we work jointly either with a [2071] deputy collector from the col-

(Testimony of Ray A. Weaver.)

lector's office, or an Internal Revenue agent from the Revenue agent's office.

Q. Now, for the information of the jury, will you state generally the division of the cases, as to how it comes about as to whether or not you are working jointly with a deputy collector or an Internal Revenue agent?

A. Generally speaking, the cases originate in the collector's office and thereafter require the services of a special agent. If it is an alleged fraud, it will remain in the collector's office unless the case is considered too large for one agency to handle.

Q. In that event what agency enters?

A. In that event the Internal Revenue men handle the case.

Q. In regard to auditing of income tax return, is there some method by which the examination and audit of returns which are filed by taxpayers with the government are divided as between the collector's office and the Internal Revenue agent's office, for the examination?

A. Yes, I do not recall precisely what the division is, but generally speaking the smaller individual returns, let us say those with net income of five thousand or less or gross income of perhaps say fifteen thousand or less, would be examined by the collector's office.

Mr. Avakian: If it is material—I don't say it is—I think we should have exact figures. I assume there are exact figures and we surely should get an exact figure rather than [2072] an assumption.

(Testimony of Ray A. Weaver.)

Mr. Campbell: This is shown simply for the background.

Mr. Avakian: If it is material, let us get it right and if it is immaterial, let us not spend time on it.

The Court: What do you question?

Mr. Avakian: We object to speculation as to the division between the two officers.

The Court: Give your objection on the next question.

Mr. Avakian: The question did not call for the objection. It came from the answer as stated. I didn't have a chance to object until he came through with speculation.

Mr. Campbell: I am not through with the subject matter.

Q. Now, Mr. Weaver, were you, in the course of your duties as Special Agent of the Intelligence Division, assigned to the investigation of the individual income tax returns of Elmer Remmer and Helen Remmer, his wife? A. Yes, I was.

Q. When did you receive that assignment?

A. I believe the assignment was initially made late in November of 1946.

Q. And has the case since that time, the matter since that time, been assigned to you in your official capacity? A. Yes, it has.

Q. Now, how soon, or when, after the case had been assigned to you did you commence active investigation? [2073]

A. I believe it was about July, 1947. I was en-



(Testimony of Ray A. Weaver.)

gaged in other investigations prior to that time.

Q. Were you from that date forward actively engaged in the investigation of this case?

A. Yes; not continuously.

Q. Well, was it inclusive to your investigating that case and handling other duties?

A. For a period of time.

Q. But over the period of times that you were assigned or commenced your active investigation, did you devote all of your time to this individual case? A. No, sir.

Q. You had other cases to handle?

A. Yes, sir, also other duties.

Q. Now, in the course of your investigation of this case, were you working in cooperation with other agents of the government? A. Yes, I was.

Q. And will you state who they were and what their official titles were?

A. When the case was first assigned to me there were two Internal Revenue agents assigned, too, Mr. Morgan, who preceded me on the stand, and Mr. Peel, who subsequently went to Korea on some other assignment, and he was replaced by Mr. Harkness, who continued until the investigation was completed. After that date I was also assisted by—

Mr. Avakian: After what date, your [2074] Honor?

A. After the Revenue agents completed their work, which I believe was about April of 1949, I was assisted at times by other special agents, including

(Testimony of Ray A. Weaver.)

Mr. Miner, who appeared here on the stand, Mr. Whiteside and Mr. Hemphill.

Q. And in that connection will you state whether or not you also had the cooperation and services, with regard to various aspects of the investigation, of agents in other cities than San Francisco?

A. Yes, we received collateral reports from our New York office, from the office covering New Orleans, Louisiana area, from our Los Angeles office and Portland.

Q. You are speaking of the office of Intelligence Division, as it is now known?

A. Yes, sir, that is right.

Q. Now, will you state who, during the investigative stages of the case, what individual was in charge of the investigation?

A. I was in general charge of the various features of the case.

Q. Is that the usual method in these investigations which are cooperatively conducted by the revenue agents or deputy collectors and Intelligence Division, that the agent of the Intelligence Division is in general charge of the investigation?

A. Yes, that is correct.

Q. Now, during the course of your investigation did you directly examine various books and records pertaining to certain businesses in which the defendant was purportedly interested? [2075]

A. I examined some of the books and records. Most of the direct examination was done by Internal Revenue agents.

(Testimony of Ray A. Weaver.)

Q. Incidentally, in that connection and with respect to this investigation, will you state the general assignment of the Revenue agents in the investigation?

A. Generally speaking they were to examine all of the books and records, and make reports on any additional tax liability that might be disclosed.

Q. Did you also examine various of the books and records of the enterprises in which the defendant was allegedly interested? A. Yes, I did.

Q. And based upon your examination and your investigation, by you or by those working under your direction, what enterprises or businesses were examined into in which the defendant allegedly had an interest?

A. We examined fully into either partial or—

Mr. Avakian: May I make an objection to the general nature of that question? It is so broad it may call forth statements as to the mention of many businesses in which there is no connection with the defendant and yet the enumeration of any such business may be improper.

Mr. Campbell: I didn't intend the question to be that broad. Maybe I can reframe the question to meet counsel's objection.

Q. What businesses or enterprises did you yourself examine, or [2076] have examined under your supervision, in which it was found that the defendant, Elmer Remmer, purportedly had some interest?

Mr. Avakian: Just a moment. That kind of statement, the question as to the businesses in which

(Testimony of Ray A. Weaver.)

it was found he had an interest, calls for conclusion; that Mr. Remmer purportedly had an interest calls for conclusion. We have had here records of various businesses in which the government contends he had an interest. Why couldn't the question be limited to those particular organizations?

The Court: Have you any reason for not doing that, Mr. Campbell? Will you do that?

Mr. Campbell: Well, yes, I will do that.

Q. Mr. Weaver, during the course of your investigation—and in order to keep from repeating a long question each time I will state the question to you at this time and then in subsequent questions I will simply call your attention to a particular entity—during the course of your investigation, did you make investigation yourself, or have made under your supervision, investigation into the affairs of the B. & R. Smoke Shoppe? A. Yes.

Q. Into the 186 Club? A. Yes, sir.

Q. Into the Day-Night Cigar Store?

A. Yes, sir.

Q. Into 110 Eddy Street? [2077]

Q. Into the Menlo Club? A. Yes, sir.

Q. Into the Transit Smoke Shop?

A. Yes, sir.

Q. Into Cal-Neva, Inc.? A. Yes, sir.

Q. Into the Mountain City Consolidated Copper Company?

A. Not into the affairs of the company itself; only so far as it related to stock purchased therein by Mr. Remmer.

(Testimony of Ray A. Weaver.)

Q. Possibly I should amend my question and say into any ownership Mr. Remmer may have in any of these enumerated concerns? A. Yes.

Q. Into the matter of loans to Brice and Silver?

A. Yes.

Q. Into the matter of loan to Hazel Harris?

A. Yes.

Q. Into acquisition of property in Morhaga Estates? A. Yes, sir.

Q. Into the acquisition of property in Richmond Annex? A. Yes, sir.

Q. Into the matter of loan to P. R. Badobinatz?

A. Yes.

Q. Into the matter of a bank account in the name of the defendant at the Tracy Branch of the Bank of America? A. Yes. [2078]

Q. Into the 21 Club at El Cerrito?

A. Yes, sir.

Q. Into the San Diego Social Club at El Cerrito? A. Yes, sir.

Q. Into a bank account at the Grand Lake Branch of the Bank of America?

A. May I clarify those El Cerrito places in this since, that the investigation was not made jointly under my direction, but the results of the examinations of revenue agents were subsequently used in the findings.

Q. They were made available to you?

A. That is correct.

Q. You are referring to results of Revenue Agent Gould, who appeared here? A. Yes.

(Testimony of Ray A. Weaver.)

Q. And the work in conjunction with Revenue Agent Farley? A. Yes.

Q. Did you inquire into a bank account under the name of Helen L. Remmer at Grand Lake Branch of the Bank of America? A. Yes.

Q. Did you inquire into the acquisition of certain real property in what is known as Morhaga Highlands? A. Yes.

Q. Did you make inquiry into the conduct of an office at 50 to 52 Mason Street, San [2079] Francisco?

Q. Did you also include in your investigation the matter of any liability from the Bank Club of Reno? A. Yes, I did.

Q. Did you also investigate, or cause to be investigated, as to his government bonds in the name of the defendant or his wife? A. Yes.

Q. Did you also make some investigation or inquiry as to the cash on hand in possession of the defendant? A. Yes.

Q. Did you also cause investigation to be made into the matter of the acquisition of certain Gallagher and Burton whiskey? A. Yes, I did.

Q. Will you state what year or years the matter of your investigation of the tax liability of the defendant, Elmer Remmer, and his wife covered?

A. Covered the years 1942 to 1946, inclusive.

Q. And in connection with your investigation for the purpose of establishing his and his wife's correct liability for those years, did you make investigation which covered years prior to that?

(Testimony of Ray A. Weaver.)

A. Yes, I did.

Q. And how far back?

A. I tried to determine whether any returns had been filed——

Q. How far back did you go? [2080]

A. For any years as far as records would reflect, back to 1918.

Q. Now during the course of your investigation by you or by those under your direction, did you attempt to ascertain as at the beginning and end of all pertinent years involved in that investigation, the assets and the liabilities of the defendant and his wife?

Mr. Avakian: Just a moment. I object to the use of the word "pertinent" years. We would like to have the years enumerated.

Mr. Campbell: Well, let us frame it this way:

Q. Mr. Weaver, during the course of your investigation did you cause to be made by those acting under your direction, investigation to determine the true and correct assets and liabilities of the defendant and his wife, Helen Remmer, as of December 31, 1943; December 31, 1944; December 31, 1945, and December 31, 1946?

A. Yes, I did.

Q. During the course of that investigation did you also attempt to ascertain whether or not, during any of those years, that is to say, 1943 to 1946, inclusive, either Elmer Remmer or Helen Remmer received any money or property by way of gift or devise?

(Testimony of Ray A. Weaver.)

Mr. Avakian: Your Honor, I object to the question in that form, since it calls for something that is based on investigation that was made rather than testimony or documentary [2081] evidence that has been present; in other words, questions that are going to call forth statements or conclusions as to material matters should be based on evidence in the record, rather than upon some extra-judicial inquiries and conversations he may have had.

Mr. Campbell: At this time he is being asked for the scope of the examination.

The Court: It is immaterial unless it has bearing on this case. Read the question.

(Question read.)

The Court: I think counsel is entitled to know the scope of the investigation.

Mr. Campbell: Yes, that will be ascertained. This is preliminary. This calls for yes or no.

The Court: Very well. He may answer the question, then.

Mr. Avakian: Yes or no answer.

A. Yes.

Q. And for the years 1944 to 1946, did you also make, or cause to be made by those acting under your direction, investigation for the purpose of ascertaining the living expenses and other expenditures not deductible for income tax purposes, as expended by the defendant and his wife, Helen Remmer?

Mr. Avakian: Object to that portion of the ques-



(Testimony of Ray A. Weaver.)

tion which calls for conclusion of this witness on the matter of law as to whether or not expenditures may have been deducted. [2082] He can simply ask if he made inquiry as to expenditures. That is factual.

Mr. Campbell: The words "not deductible" may go out of the question. Will you answer it as amended?

A. Yes, I did.

Q. Now, Mr. Weaver, preliminarily I will ask you whether or not at my direction you prepared a summary of the assets and liabilities of the Menlo Club as of the dates December 31, 1945, and December 31, 1946?

A. Yes, I have.

Q. I show you Plaintiff's Exhibit 165 for identification, and ask you if that is the schedule which you prepared under my direction or at my direction?

A. Yes, it is.

Q. And will you state, Mr. Weaver, the source of the figures which you placed on that exhibit?

A. These figures were taken from other exhibits we found in evidence or from testimony of witnesses who appeared here.

Q. Now will you state first as to what exhibits you consulted in preparing this summary?

A. There are quite a number. Do you want all of the numbers?

Q. Yes, just give us the numbers.

A. Do you want items to which each refers?

Q. No, just the exhibit numbers because the exhibit is not at this point in evidence. [2083]

(Testimony of Ray A. Weaver.)

A. 114-A; 132-A.

Q. Pardon me, 114-A, what is that exhibit?

A. That is a poker sheet, or two poker sheets, of the Menlo Club.

Q. What other exhibits?

A. 132-A. Do you want a description of the exhibit?

Q. Well, I do not think that would be necessary at this point. Just give us the exhibit numbers that you referred to.

A. Exhibits 53, 89, 90, 133-K, 134, 135, 136, 132-C; the testimony of Mr. Maundrell; 132, 133-A, 27; the testimony of Mr. Miner, who appeared here yesterday; No. 34.

Q. Does that cover all of the exhibits?

A. I believe so, with the possible exception of the Menlo Club books themselves, from which I extracted the capital accounts appearing therein. I do not recall that exhibit number.

Q. I believe that is one of the exhibits whose number you have already given.

A. It may be.

(Jury and alternate jurors admonished and recess taken at 2:30 for 15 minutes.)

2:45 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further [2084]

Direct Examination

By Mr. Campbell:

Q. I believe you have before you, Mr. Weaver, Exhibit 165 for identification? A. Yes.

Q. And by request you enumerated the exhibits from which you stated you drew the figures hereon, with the exception of two items which you stated that you took from the testimony of Mr. Maundrell and from the testimony of Mr. Miner?

A. Yes.

Q. And as to those two particular figures, I will ask you if you placed those in this exhibit at my direction? A. Yes, I did.

Mr. Campbell: Now at this time I will offer in evidence Plaintiff's Exhibit 165.

Mr. Avakian: May we examine the witness on his voir dire on that?

The Court: Yes, sir.

Q. (By Mr. Avakian): Mr. Weaver, have you set forth in Exhibit 165 all of the liabilities reflected in the books of the Menlo Club?

A. I believe there is one sheet of the Menlo Club showing liability to Gene Schriber which we considered personal—

(Testimony of Ray A. Weaver.)

Q. Your answer is that you did not include one liability contained in the books of the Menlo Club?

A. Not in this particular exhibit. [2085]

Mr. Avakian: Then, your Honor, I object to the offer of this exhibit in its present form, on the ground it is not what it purports to be because it purports to set forth a net worth figure that the witness has testified in making that computation he omitted a liability shown on the books. I submit that is not the proper way of computing net worth and the introduction of the exhibit in this form is misleading, creates a completely false picture, and I do not want to state the amount in the presence of the jury, but I would be glad to show the amount of it.

The Court: While you are discussing that, perhaps any matter concerning the absence of one liability could be taken up on cross-examination.

Mr. Avakian: Your Honor, the amount is so large that it completely distorts the net worth figure. I presume Mr. Campbell is going to read it to the jury the minute it gets in evidence.

Mr. Campbell: May I ask another question or two?

The Court: Very well.

Q. (By Mr. Campbell): Mr. Weaver, in regard to your examination of the records of the Menlo Club, did you examine this book, 125-C?

Mr. Golden: We don't know of any 125-C.

Mr. Campbell: Pardon me, it is Exhibit 125.

(Testimony of Ray A. Weaver.)

Without referring to the pages, can you say, generally, if you examined [2086] that book?

A. Yes, I did.

Q. And during the course of your investigation, was that book in your possession; that is to say, in your custody, in your official capacity?

A. Was it in my custody?

Q. In your official capacity?

A. Yes, it was.

Q. Over what period of time?

A. I can't state the exact date that the revenue agent secured the book, but from that date until the time his records were turned over to Mr. Semenza it was in my custody.

Q. And what date were they turned over to Mr. Semenza?

A. I believe it was July 7, 1949.

Mr. Avakian: May we have what records? He said all—may I have him enumerate which of those he had in his custody?

Mr. Campbell: Just a minute, Mr. Weaver.

Q. When you say the records were turned over to Mr. Semenza, did you receive a receipt for them at that time?

A. Mr. Semenza prepared a list in his own handwriting of the records which he took at that time.

Q. I show you Exhibit 70 for identification and ask you if that is the document to which you refer as having been prepared by Mr. Semenza at the time you turned the records over to him?

A. Yes, this is it. [2087]

(Testimony of Ray A. Weaver.)

Q. Incidentally, does that refresh your recollection as to the date they were turned over?

A. Yes, it was July 11, 1949.

Mr. Campbell: This receipt will be offered in evidence as Plaintiff's Exhibit 70.

Mr. Avakian: No objection, your Honor.

The Court: Exhibit 70 is admitted in evidence.

Q. Now I observe, Mr. Weaver, that there is listed hereon quite a number of items of records. Were these the records that were turned over to him at that time? A. Yes, they are.

Q. And included in those records was there Plaintiff's Exhibit 125?

Mr. Avakian: We will stipulate to save time.

A. Yes, it was.

Q. And after having turned this over to Mr. Semenza on this receipt, when was the next time after July 11, 1949, that you saw this ledger, or did you see it at any time prior to its production here in court?

A. Yes, I saw it either a day or two after it was deposited with the clerk in court.

Q. But between July 11, 1949, and the time it was deposited with the clerk of this court, did you see this ledger? A. No, I did not.

Q. Now I am going to direct your attention to the page herein [2088] which has been marked 125-C, which is entitled "Tiny's Restaurant, Menlo Bar, Menlo Club Furniture, Fixtures, Equipment and Lease," and ask you if you will state when you first saw that sheet?

(Testimony of Ray A. Weaver.)

A. When I saw this book after it was deposited with the clerk of the court is the first recollection I have of seeing that here.

Q. At the time you made your examination of these records and with respect to furniture, fixtures, equipment and lease, did you see some other sheet containing other entries?

A. Yes, I did. As a matter of fact, I have a photostat of it.

Q. I show you Plaintiff's Exhibit 140 in evidence and ask you if that is the sheet to which you refer?

A. Yes, this is the sheet.

Q. And have you examined the books since they were deposited with the clerk, for the purpose of ascertaining whether or not the original of this sheet which you hold in your hand as a photostat, is contained in any of the records which were deposited with the clerk?

A. Yes, I have.

Q. And what did you find?

A. I could find none. That is, I couldn't find this particular one.

Q. You couldn't find the original of which that is a photostat?

A. No, sir. [2089]

Q. Now will you examine the sheet which is now in this ledger, which has been marked 125C, and also this photostat which has been marked plaintiff's Exhibit 140, and state, if you will, first, do the two sheets apparently relate to the same general subject matter?

A. Yes, both appear to relate to the purchase

(Testimony of Ray A. Weaver.)

of the Menlo Bar, restaurant and club from Mr. Schriber.

Q. Now are the entries on 125 and the entries on Exhibit 140 the same?

A. Not in all respects, no.

Q. Will you state in what respects they differ?

A. On 125C the total cost of \$175,000 is allocated \$143,801.50 to the lease, \$31,895.50 to the cost of equipment and inventory, whereas on 140 the cost of the lease is shown as \$100,000 and the cost of equipment and inventory at \$75,000.

Q. Now as to the entries of payments against that liability, how does the one sheet, that is sheet 125C, which is part of the ledger, compare with the photostat, Exhibit 140?

A. The photostat 140 on April 30, 1945, shows a credit for payment to Mr. Schriber of \$25,000, which does not appear on 125C, and Exhibit 125C has an entry under date of May 1, 1947, for a payment of \$25,000 which does not appear on No. 140.

Mr. Avakian: I wonder if we couldn't stipulate any portion counsel wants to read may be read. This is a matter that was very thoroughly gone into with Mr. Miner and explained. [2090] This is not new; this is repetition of testimony of Mr. Miner.

The Court: It may be preliminary.

Mr. Avakian: I assumed it was in connection with the voir dire on 165. It seems to be going far afield.

Mr. Campbell: It is preliminary.

The Court: I think on the questions of voir dire



(Testimony of Ray A. Weaver.)

Mr. Campbell undertook to lay some additional foundation.

Mr. Campbell: Yes, your Honor, and I am gradually, maybe somewhat clumsily, getting into that subject.

Q. The differences would and did affect the year-end balance, would they not, as showing amount due? A. Yes, they would.

Q. Now with reference to plaintiff's Exhibit 165 for identification, did you include in that exhibit the liability as shown by either plaintiff's Exhibit 125C, the page that is now in the ledger, Exhibit 125, or the photostat, Exhibit 140?

A. No, sir.

Q. And did you on the schedule eliminate or leave out that liability upon my instructions?

A. Yes, I did.

The Court: When you say schedule, do you mean 165?

Mr. Campbell: Yes, your Honor.

Q. Now were any other liabilities as shown by any of the records which have been produced here relative to the Menlo Club eliminated? [2091]

A. May I see that ledger again, please? There are no other liabilities in this ledger.

Q. Were there any other liabilities which you found and which were eliminated, however, on that Schedule 165, other than the Schriber liability?

A. No, sir. I might add that we did adjust the reserve for amortization which is claimed in the return, which is not, strictly speaking, a liability,

(Testimony of Ray A. Weaver.)

although we have considered it under that section.

Q. All right, we will come to that in a minute. Now, Mr. Weaver, as an expert accountant, will you state the reason why the theory for the elimination from the schedule of assets and liabilities of the Menlo Club of the liability to Gene Schriber?

Mr. Avakian: Objected to as already asked and answered. He said on instructions of Mr. Campbell, who is not an expert accountant.

The Court: Objection overruled.

A. The liability was eliminated from the Menlo Club because the testimony of Mr. Schriber indicated all his dealings were with Mr. Remmer personally and that Mr. Remmer had in fact pledged or deeded over on a trust deed to Mr. Schriber as security for the liability some of his personally owned real estate.

Q. So that accountingwise it was treated as a personal [2092] liability of Elmer?

A. That is correct.

Q. Rather than of the Menlo Club, for that purpose? A. That's right.

Mr. Campbell: I will now offer in evidence Exhibit 165 for identification.

Mr. Avakian: May I continue my voir dire?

The Court: Yes, sir.

Q. (By Mr. Avakian): Mr. Weaver, insofar as the liability to Mr. Schriber is concerned, the difference between Exhibit 140 and Exhibit 125C is the amount of 25 thousand dollars at the end of 1945 and 1946, is it?

(Testimony of Ray A. Weaver.)

Mr. Campbell: You mean the liability itself?

Mr. Avakian: Yes, the difference in the amount of the liability.

A. As I recall, it is 25 thousand at the end of 1945 only. Would you care to have me check that?

Q. Yes, would you, please?

A. At the end of 1946, No. 125C shows balance of 75 thousand, which agrees with the last balance in '46 on No. 140 of 75 thousand, so they agree as of that date.

Q. The difference is only to the end of 1945?

A. That is right.

Q. And at the end of 1945 would you read the amount of liability shown by the respective [2093] exhibits?

A. No. 125C shows 125 thousand and 140 shows 100 thousand.

Q. So at the very least there was a liability of 100 thousand, if you use Exhibit 140; is that right?

Mr. Campbell: Objected to as not proper voir dire. It is cross-examination.

Mr. Avakian: I am trying to develop the amount of liability which he has permitted.

The Court: You may proceed.

Mr. Campbell: The weight to be given——

The Court: Let me hear the question again.

(Question read.)

The Court: How does that affect——

Mr. Avakian: Because the cost is listed as an asset of the Menlo Club. It is as if I bought a house

(Testimony of Ray A. Weaver.)

for twenty thousand dollars and sold it for ten thousand, I would list twenty thousand as an asset, but to show my true net worth I would have to list ten thousand mortgage.

The Court: This is his explanation and summary of the different exhibits and of in connection with testimony of one or two witnesses.

Mr. Avakian: That is right, but his explanation as to why he——

The Court: I think that is a matter for cross-examination.

Q. Let me ask this—both those pages relate to a liability [2094] with respect to the purchase of the Menlo Club from Mr. Schriber, do they not?

A. That is right.

Q. And you have set forth in the assets of the Menlo Club in 165 for identification the full purchase price of the Menlo Club; isn't that right?

Mr. Campbell: Objected to as not proper voir dire. It is cross-examination.

The Court: I think it is all cross-examination.

Mr. Avakian: Your honor, the purpose is to show that this is not truly a net worth statement.

The Court: This would be the purpose of cross-examination.

Mr. Avakian: If this is not what it purports to be, then it should not be received in evidence. I have not finished my voir dire.

The Court: Along this line I will sustain the objection.

Q. You stated the reason for omitting any lia-

(Testimony of Ray A. Weaver.)

bility to Mr. Schriber in net worth of 165 was that you concluded the purchase of the Menlo Club was a transaction between Mr. Schriber and Mr. Remmer?

A. Yes, therefore showed it as Mr. Remmer's personal liability.

Q. Then should you not likewise, as proper accounting practice, show the asset as belonging to Mr. Remmer personally, rather than to the Menlo Club? [2095]

Mr. Campbell: We are getting into another subject matter.

Mr. Avakian: It is a question whether this is a proper accounting, your Honor.

The Court: This is his summary of records and testimony and I think the questions are proper for cross-examination.

Mr. Avakian: But voir dire is cross-examination, directed to the point whether the summary is what it is or purports to be.

The Court: That is for the jury to determine.

Mr. Avakian: If I can develop it is not accurate net worth, it should not go into evidence.

The Court: Well, it will be admitted in evidence and you may cross-examine on those points.

Q. (By Mr. Campbell): I will return to Mr. Weaver plaintiff's Exhibit 165—incidentally, I neglected to ask; this is headed "Menlo Club"; does this also include the waffle shop and the bar?

A. Yes, it does.

(Testimony of Ray A. Weaver.)

Q. The three are treated as one entity; is that correct?      A. Yes.

Q. Now based upon this summary, what is shown to be from the records which you have identified and drawn in the manner in which you have identified, the net worth of the Menlo Club organization at that date, on December 31, 1945? [2096]

A. At that date the net worth, based on these figures, \$183,647.94.

Q. And as of December 31, 1946?

A. \$192,836.47.

Q. Now I believe you stated that you made some adjustment relative to the reserve for amortization as set forth here. Now first will you state if there was an account set up on the books of the Menlo Club for amortization?

A. No, I do not believe there was.

Q. Will you state whether amortization was claimed in the partnership returns of the Menlo Club to which you have referred?

The Court: I don't know that all the members of the jury thoroughly understand——

Mr. Campbell: I was going to have him pick up the item and then explain what it refers to.

A. As I recall, if the answer I gave refers to the returns, the original 1945 and 1946 returns had no claim for amortization shown.

Q. But in the amended returns filed at a subsequent date, which are here in evidence, do they show amortization?      A. Yes.

(Testimony of Ray A. Weaver.)

Q. Amortization of what? Would you explain what it refers to?

A. Amortization of the cost of the lease. As an explanation, it is stated the lease is for a five-year period and at a cost—— [2097]

Mr. Avakian: I think the witness has misquoted, and may we have him refer directly to the returns?

Mr. Campbell: Yes, we are just getting the returns.

Q. I am going to show you Exhibits 89, 90 and 91, together with Exhibit B, the lease from Gene Schriber to Joseph Billington. Are those the documents which you wish to have?

A. There is also a receipt from Mr. Schriber.

Q. I will give you Exhibit 51, the original lease. I also hand you Exhibit 53, the receipt of Mr. Schriber to Mr. Billington.

A. You want me to explain why the change was made in the amortization?

Q. Yes, and what the amortization refers to.

A. Well, according to the lease itself, Mr. Remmer was to have a lease on the premises at 32 Turk Street and also the ground floor premises of 18 Turk Street for a period of ten years for a total rental of 219 thousand dollars, which was payable, the first five years at the rate of \$1650 a month and the second five years at the rate of two thousand dollars a month. Now that was a rental that had to be paid. In addition to that rental, in order to secure the lease, according to Exhibit 53, Mr.

(Testimony of Ray A. Weaver.)

Remmer also had to pay 100 thousand dollars as and for a ten-year lease of the hereinafter described premises, which refers to the same premises, which was in addition to the rental itself. Well, that 100 thousand dollars actually represents, [2098] therefore, an additional rental for the ten-year period, which is paid in one lump sum at the beginning of the lease period, and therefore from accounting, also from a tax standpoint, should properly be allocated or written off over the term of the years, which is ten years, which is the term over which it has been written off in connection with the figures shown on Exhibit 165. As I stated, such a deduction was not claimed on the original returns filed, but was claimed on the amended returns filed. However, there the sum was computed by stating that the lease cost \$143,801.50, whereas the receipt, Exhibit 53, specifically designates a cost of 100 thousand as and for a ten-year lease. Also the returns spreads or allocates that cost over a five-year period, whereas the receipt itself states that the lease will be for ten years, and Exhibit 51, which is the lease itself, refers to a term of ten years commencing May 1, 1945, as the lease period.

Q. Now in setting up the liability, by which you are charging off the reserve for amortization of the lease, I observe that for 1945 you have set up the figure of \$6,666.67. Will you state how you arrived at that figure?

A. To begin with, supposing the entire cost of 100 thousand dollars were allocated over ten years,



(Testimony of Ray A. Weaver.)

it would mean that ten thousand dollars applied to each year.

Q. Ten thousand dollars a year, would it not?

A. Yes. [2099]

Q. How did you arrive at the figure of \$6,666.67 as of the end of 1945?

A. That applies for a portion of the year during which the lease was in effect during 1945, from May 1st, 1945, to the end of the year, a period of eight months. That represents eight-twelfths of ten thousand dollars.

Q. Or two-thirds? A. That's right.

Q. And at the end of 1946 that reserve had been increased to \$16,666.67, or an increase of ten thousand dollars? A. That's right.

Q. And how did you arrive at that additional ten thousand dollars?

A. That represents one-tenth for each succeeding year, for the year 1946 added \$6,666.67 remaining at the end of the prior year.

Q. Now referring again to the Exhibit 165, the item of cash on hand as of December 31, 1945, of ten thousand dollars, and December 31, 1946, of \$10,003. From what source did you obtain that figure?

A. Those were taken from the poker sheets, which I believe are Exhibit 114A.

Q. Now on the books or ledgers of the Menlo Club did you find any account for cash on hand other than the entries on the poker sheets for those days and other than petty cash item?

(Testimony of Ray A. Weaver.)

A. Is there another ledger for the Menlo Club? [2100]

Q. I hand you plaintiff's Exhibits 126, 128, 129, and 127, Mr. Weaver, the cash account I am referring to, is that the cash on hand bank roll?

A. There is one sheet in Exhibit 126 which under "Change Fund" shows balance of ten thousand dollars, but there are no dates indicating when that was established or how long it was in existence.

Q. So the figure you took was taken from the poker sheets? A. That is right.

Q. For those respective dates, is that correct?

A. Yes.

Q. Now the next item which you have listed here is that of "Accounts Receivable," advance for purchase of equipment at 50 Mason Street. What is the source of those figures?

A. I don't have the exact exhibit numbers for those, but those were taken from the exhibits identified by Mr. Maundrell as representing payments for improvements and alterations to the premises at 50 Mason Street.

Q. Those were the series of checks which were identified here by Mr. Maundrell?

A. Not all of them, but in part.

Q. But they were taken from that series of checks which are here in evidence? A. Yes.

Q. And which have been given the series numbers of 132, 133, [2101] 134, 135 and 136, is that correct?

A. I can't give you the detail of the checks be-

(Testimony of Ray A. Weaver.)

cause I just have the one figure here and the detail is supported by another schedule.

Q. Do you have that other schedule?

A. No, I believe that is in the possession of another agent.

Q. Will you have that Monday? A. Yes.

Q. I will at this time ask you to identify another sheet here, in order that we may give it to counsel over the week end. I will ask you if you prepared, at my instructions, a schedule setting forth the assets and liabilities of the B. & R. Smoke Shoppe as of December 31st, 1943, 1944, 1945 and 1946?

A. Yes, I did.

Q. And is that the schedule which I show you?

A. Yes.

Q. And have you indicated on this schedule the sources from which you drew the information that is set forth hereon? A. Yes, I have.

Mr. Campbell: I will ask to have this marked for identification.

The Clerk: 169.

Mr. Campbell: May I suggest a recess at this time.

(Jury and alternate jurors admonished and recess taken at 3:45 until Monday, January 14, 1952. [2102])

State of Nevada,  
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had and the testimony adduced at the trial of the case entitled United States of America, Plaintiff, vs. Elmer F. Remmer, Defendant, No. 12,177, at Carson City, Nevada, commencing November 28, 1951, and concluding February 21, 1952, and that the foregoing pages, numbered 1293 to 2102, inclusive, dated Dec. 27, 1951, to Jan. 4, 1952, inclusive, being Vol. III of four volumes, constitutes a true and correct transcript of my said shorthand notes, not including arguments in the absence of the jury, to the best of my knowledge and ability.

Dated at Carson City, Nevada, February 22nd, 1952.

/s/ MARIE D. McINTYRE,  
Official Reporter. [2102-A]

January 28, 1952, 10:00 A.M.

(Defendant present with counsel. Mr. Gillen absent.)

(Roll call of jury and alternate jurors.)

**MR. WEAVER**

resumed the witness stand on further

**Direct Examination**

By Mr. Campbell:

Q. Mr. Weaver, at the close of the last session you had identified and there was received in evidence plaintiff's Exhibit 165, being the assets and liabilities statement of the Menlo Club, concerning which you had given testimony. Now I direct your attention to one of the assets which you have set forth thereon, to wit: the item appearing as of December 31, 1946, the last asset upon that sheet, "Bank of America Menlo Club account \$15,265.54." I also show you plaintiff's Exhibit 34, the photo-static copies of the signature cards and ledger sheets in the Day and Night office of the Bank of America of commercial account in the name of Menlo Club, and ask you if, in arriving at that balance as of the year-end December 31, 1946, you examined Exhibit 34? A. Yes, I did.

Q. And will you also state, Mr. Weaver, the date as shown by that exhibit as to when that account was opened?

A. This account was opened to the first deposit on October 2, 1946.

(Testimony of Ray Weaver.)

Q. On October 2, 1946, is that correct? [2103]

A. Yes, that is correct.

Q. And I call your attention to the fact that on those ledger sheets there are shown, between the date of the first deposit and December 31, 1946, a number of deposits to that account, is that correct? A. Yes, that is correct.

Q. And in connection with those deposits, did you examine the deposit tickets which made up those deposits?

A. I didn't examine them personally; I had them examined.

Q. Under your direction? A. Yes.

Q. And did you cause to be secured from the bank photostatic copies of the deposit tickets?

A. Yes, I did.

Mr. Campbell: I am going to ask that this be marked for identification, this group of photostats, as 170 for identification.

Q. Are these the photostatic copies to which you refer? A. Yes, they are.

Q. I am going to return these exhibits to you, Nos. 34 and 170 for identification, and ask if you made an examination and state if the slips set forth in 170 for identification are in the same number as the number of deposits shown between the opening of the account and December 31, 1946, in plaintiff's Exhibit 34?

Mr. Avakian: We stipulate to that, your Honor. [2104]

Mr. Campbell: I will offer these photostatic

(Testimony of Ray Weaver.)

copies of deposit slips, instead of 170 for identification, I will offer them as 34A, so that they may bear the same number as the bank account.

Mr. Avakian: No objection, your Honor.

The Court: Exhibit 170 marked for identification admitted in evidence as 34A.

Q. Mr. Weaver, I am going to hand you these deposit slips, plaintiff's Exhibit 34A, and I will ask you to state the date of each deposit, the amount and the form of the deposit in which the deposit is made.

A. October 2, 1946, there was deposit in amount of \$46,890.10. The deposit slip is marked "New account" and indicates the deposit consisted of cash. The next deposit was on October 3, 1946, in amount of \$29,719.25, all of which was in currency and coin. The next deposit was on October 14, 1946, in amount of \$7,785.25, all of which was in currency and coin. The next deposit was October 22, 1946, in amount of \$5,217, all of which was in currency. The next deposit was November 4, 1946, in amount of \$4,494, all of which was in currency. The next deposit was November 14, 1946, in amount of \$5,757.75, all in currency and coin. The next deposit was on November 26, 1946, in amount of \$4,998, all in currency. The next deposit was December 3, 1946, in amount of \$5,801.25, all in currency and coin. The next deposit was on December 19, 1946, in amount of \$8,939.50, all in [2105] currency and coin. That is the last deposit in the year 1946. The next runs into the following year.

(Testimony of Ray Weaver.)

Q. Do those represent, according to the deposit slips and according to the ledger sheets of the account of the Menlo Club at the Day and Night office of the Bank of America, all of the deposits that were made from the opening date, October 2, 1946, to and including December 31, 1946, to that account?

A. Yes, these are all the deposits.

Q. On the ledger sheets of the commercial account of the Menlo Club at the Bank of America, there are certain withdrawals or charges against that account during the period of October 2, 1946, when the account was opened, to and including December 31, 1946, and I will ask you if, in the course of your examination of the records of the Menlo Club, which are here in evidence, if you examined and analyzed the withdrawals or charges to that account?

A. Yes, we did, to the extent possible. I do not remember whether we could identify all of them or not.

Q. Now I call your attention to the fact that the first withdrawal as shown in Exhibit 34 bears date of October 14, 1946, in amount of \$18,331.06. Did the records disclose in what manner that amount was withdrawn from the bank account?

A. I believe it did—

Mr. Avakian: May that be answered yes or no?

The Court: That answer is about the same. He said, "I [2106] believe it did."

Mr. Avakian: I thought he was going further.

Q. Did you examine the records pertaining to



(Testimony of Ray Weaver.)

this account for the purpose of ascertaining in what manner the charges against this account were accrued?

A. You mean the Menlo Club records or the bank records?

Q. The bank records.

A. Yes, I examined the bank records.

Q. By bank records are you referring to the records of the Bank of America?

A. Not necessarily. If a charge represented a transfer to some other bank account, that would involve examination of that account also.

Q. And did you also, in that connection, examine the records of the Menlo Club that were available to you? A. Yes.

Q. What did your examination disclose as to item October 14, 1946, charge against this account in amount of \$18,331.06?

Mr. Avakian: We object to that, the records are the best evidence.

The Court: Objection overruled.

A. May I refer to our working papers?

Mr. Campbell: Yes. The witness has handed me a document consisting of two sheets, to which is also appended a further sheet, which I will ask to have marked for identification [2107] as plaintiff's 171 for identification.

Q. Referring to this 171 for identification, are those the working papers to which you refer?

A. Yes, it is.

Mr. Avakian: It might save time if we inquire

(Testimony of Ray Weaver.)

of counsel whether he intends to examine Mr. Weaver on all of these entries or just the one referred to.

Mr. Campbell: I am going to examine him as to charges against that account from October 2, 1946, to December 31, 1946.

Mr. Avakian: As to all of them.

Q. Mr. Weaver, will you refer to 171 for identification to refresh your recollection, if you can, and state from your refreshed recollection, answer my question as to the charge of \$18,331.06, as shown against the account on October 14, 1946.

A. That represented a transfer of funds from this account to the account of the Crocker First National Bank in the name of Harold H. Maundrell.

Q. And that is the same bank account, the ledger sheets of which are here in evidence?

A. That is correct.

Q. Now the next charge against that account shows on the bank records, Exhibit 34, as November 8, 1946, in amount of \$65,000. Will you refresh your recollection and then, having refreshed your recollection, will you state what your examination disclosed as to that item? [2108]

A. That was a check payable to Willie E. Kyne in amount of \$65,000 and it was cashed by Willie E. Kyne.

Q. Is that the same check which has been marked plaintiff's Exhibit 115 in evidence?

A. Yes, that is correct.

Q. I direct your attention to the fact that the

(Testimony of Ray Weaver.)

next charge against the Menlo Club bank account at the Day and Night office of the Bank of America is as of December 3, 1946, in amount of \$16,005.50. Will you refresh your recollection and then, having refreshed your recollection, will you state what your examination disclosed as to that item?

A. That item represents a check payable to Willie E. Kyne, which was cashed by Mr. Kyne.

Q. Is that the same check which I show you which has heretofore been marked plaintiff's Exhibit 120? A. Yes, that is correct.

Q. In amount of \$16,005.50? A. Yes.

Q. Now the final charge against that account during the year 1946, as disclosed by plaintiff's Exhibit 34, is a charge on December 13, 1946, in amount of five thousand dollars. Will you refresh your recollection and state from your refreshed recollection what your examination disclosed as to that item?

A. It was a check payable to Harold Maundrell and deposited to the account under his name at the Bank of America. [2109]

Q. And is that one of the accounts which is here in evidence? A. Yes.

Q. Now with regard to these four items of charges against this account from the date of its opening, October 2, 1946, to and including December 31, 1946, did you find entries in the books of the Menlo Club which you examined relative to those charges?

A. May I see the 1946 record, please?

(Testimony of Ray Weaver.)

Q. I hand you government's Exhibits 125, 127 and 129. If those are not the records which you were looking for, you may step down to where the books are and find the proper book.

(Question read.)

A. No, I found no entries in the books.

Q. Did you find any entries on the books with relation to the bank account itself, other than the check stubs?      A. No.

Q. Now specifically with regard to plaintiff's Exhibit 115 in evidence, which is a check in the amount of \$65,000, drawn in favor of W. E. Kyne, marked "Loan to Elmer Remmer" and signed Menlo Club, W. E. Kyne, and endorsed W. E. Kyne, did you find any record, in the course of your examination or investigation, relative to whatever transaction is represented by that check?

A. No, sir. Other than the notation on the check itself, which contains, "Loan to Elmer Remmer."

Q. Did you find any record other than the check itself? [2110]      A. No, sir.

Q. Now with regard to plaintiff's Exhibit 120, which is check dated December 2, 1946, on the same account, payable to Wm. E. Kyne, \$16,005.50, signature Menlo Club, Wm. E. Kyne, and handwriting, "Loan for Transit" and signature Wm. E. Kyne, did you find any record in any of the books or records which you examined, in the course of your investigation, pertaining to the transaction which

(Testimony of Ray Weaver.)

that check represents, other than the check itself?

A. No, sir.

Q. I show you Exhibit 169 for identification, which I believe you identified at the last session of the court as a document drawn by you, is that correct?

A. Yes, that is correct.

Q. Now calling your attention to the various items which make up this exhibit, you have set forth here opposite certain of the items referring to exhibit numbers. Are they numbers of exhibits which have been admitted here in evidence in this case?

A. Yes, they are.

Q. And when that reference appears herein, were those exhibits to which reference is made the source from which you obtained your figures?

A. Yes.

Q. In addition I notice, in relation to two of the items, that you refer to testimony, giving the name of a witness. [2111] In those cases where that is set forth, were those entries made at my direction?

A. Yes, they were.

Q. And are all of the figures set forth herein, other than the totals as set forth, either from exhibits as referred to herein and which are in evidence in this case, or from testimony to which reference is made?

A. Yes.

Mr. Campbell: This will be offered as 169 in evidence.

Mr. Avakian: Your Honor may we examine this witness on voir dire as to the foundation of some of these entries?

(Testimony of Ray Weaver.)

The Court: Very well.

Q. (By Mr. Avakian): Mr. Weaver, on your proposed Exhibit 169 you have shown a certain amount as cash on hand on December 31, 1943, with reference to Exhibit 111A as the source. I will hand you 169 for identification and I will also hand you 111A, would you show me the page in Exhibit 111A on which the amount of cash on December 31, 1943, is set forth?

Mr. Campbell: Objected to as not proper voir dire. It is proper cross-examination, if the Court please.

Mr. Avakian: I am testing the foundation of a statement is the exhibit as to the source.

The Court: He may answer the question.

Mr. Campbell: Then I make the objection that the question is misleading, in that the item referred to on Exhibit [2112] 169 states that it was obtained from Exhibit 111A and testimony. You asked as to date——

Mr. Avakian: I asked the page of 111A on which the source of that information appears.

Mr. Campbell: Which information?

Mr. Avakian: The item shown as the amount of cash for December 31, 1943.

Q. Will you show me the page for December 31, 1943?

A. Under date of January 1, 1943, there is a notation on top of that page, \$15,000 BR cash. Subsequent to that date there were no other entries for the bank roll. We finally secured the figures

(Testimony of Ray Weaver.)

of the bank roll from Mr. Kyne and Mr. Maundrell——

Mr. Avakian: Pardon me——

Mr. Campbell: I think he has a right to finish his answer.

The Court: If he wants to finish his answer, he may do so.

Mr. Avakian: All right.

A. We tried to secure information as to the bank roll on subsequent dates of Mr. Kyne and he said he couldn't remember and Mr. Remmer, whom we couldn't talk to. We had no other source of information for any bank roll of any later date and we were forced to carry the same figure through to the later years. The only other which we have some information is from Mr. Pritchett's testimony, who gave us the bank roll at December [2113] 31, 1945, of \$20,000, and that is the reason we changed the bank roll at the end of 1945 to \$20,000.

Q. I am going to repeat my question, as to whether you can show on Exhibit 111A the figure for December 31, 1943.

Mr. Campbell: Objected to as asked and answered.

The Court: Objection sustained.

Q. With respect to December 31, 1944, you have made entry as cash on hand with source being stated as Exhibit 111A. Will you show me the page in Exhibit 111A on which there is a cash figure shown on Exhibit 111A?

(Testimony of Ray Weaver.)

Mr. Campbell: Objected to as asked and answered.

The Court: He asked only as to 1943 before. You may answer.

Q. Show me.

A. The same figure is carried forward from December 31, 1943, to December 31, 1944——

Q. Will you show me the page?

A. ——because we were unable to find any record kept of the bank roll on that date and none of the partners whom we could interview——

Q. Will you show me the page?

A. ——were able to give us anything.

Q. Is there a page?      A. There is no entry.

Q. Is there any entry for December 31, 1944? [2114]

A. No, because there was no bank account after January 1, 1943.

Q. With respect to cash on hand on December 31, 1945, you have an amount of \$20,000, which you have labelled as source Pritchett testimony, and you say Mr. Campbell instructed you to put that figure in there?      A. That is correct.

Q. Can you refer us to Mr. Pritchett's testimony to the effect there was \$20,000 on hand?

Mr. Campbell: The record speaks for itself.

The Court: Sustained.

Q. Did you personally examine the record before making this entry?

Mr. Campbell: Same objection.

The Court: Objection sustained.



(Testimony of Ray Weaver.)

Q. With respect to the figure \$20,000 shown as cash on hand December 31, 1946, you have shown as the source of that Mr. Pritchett's testimony, is that correct?      A. That is correct.

Q. Did you hear Mr. Pritchett's testimony that during 1946 he was employed for only one week and that was March, 1946?

Mr. Campbell: Objected to as argumentative. The record speaks for itself.

The Court: Objection sustained.

Q. Can you point to Mr. Pritchett's testimony with respect to [2115] any cash on hand December 31, 1946?

Mr. Campbell: Same objection.

The Court: Objection sustained.

Mr. Avakian: I am going to make objection to this exhibit for these grounds: I think your Honor will bear in mind was that except for the totals, this represented data taken from evidence in this case and to that extent thereof it purports to be a summary of the evidence, and in that respect it is not a matter of accounting analysis or judgment, but simply a condensation into one sheet of what is purportedly the evidence in the case, and in that respect, your Honor, if it is offered as a summary of evidence in the case, it should be accurate or it has no place here at all. Now there are four items here as to which we make objection on different grounds for each one. First of all, with respect to the entry December 31, 1943, that purports to show cash on hand of \$15,000 at the end of 1943. The witness has testified on voir dire, although the

(Testimony of Ray Weaver.)

Exhibit 169 purports that the source of that Exhibit 111A, actually it was his own conclusion, that there was no change in the bank roll after January 1, 1943. There is no entry in Exhibit 111A or any bank roll on December 31, 1943. With reference to the next date, December 31, 1944, there is no entry whatsoever in Exhibit 111A as to that date. As a matter of fact, Exhibit 111A is the diary for 1943 and does not even purport to relate to 1944, so the figure for December [2116] 31, 1944, although it has been represented as simply a figure taken out of the evidence, actually represents, as shown by the voir dire testimony, as being conclusion that the bank roll on January, 1943, was still in exactly the same figure two years later. As to the figure December 31, 1945, cash on hand \$20,000, which is labelled as Mr. Pritchett's testimony, I call your attention to the fact that the record shows—in view of the fact this was marked for identification two weeks ago, we have carefully read the testimony—shows that December 31, 1945, his best recollection was that cash on hand was \$5,000, that in addition there were accounts receivable of \$15,000. Now he said that twice, the only two times he was questioned that is what he said, not \$20,000 cash, but \$5,000 cash, so that this is directly contrary to the evidence, and I might say if counsel can point to anything contrary, I would be glad to hear it and would be glad to read to your Honor the record references on that testimony. This exhibit purports to show cash on hand at the end of 1946

(Testimony of Ray Weaver.)

of \$20,000 and the source is labelled as Pritchett's testimony. We have searched Pritchett's testimony. He testified in 1946 he was at the B. & R. Smoke Shoppe for one week only and that was in March. He gave no testimony regarding the end of 1946. He wasn't asked any questions about the end of 1946 and obviously there is nothing in the record about it because he was only there one week in March. How can we present to the jury as a summary of evidence [2117] taken from this record a statement that at the close of the period involved in this indictment there was \$20,000 cash according to Mr. Pritchett, when there is not one iota of testimony to that effect? Now to admit this exhibit in evidence that can be given to the jury, with representation it is summary of the evidence, would be highly improper because it is contrary to the evidence as to that \$20,000 figure of 1946. There is not a word in the record as to that figure for 1946 from any witness, let alone Mr. Pritchett, who is the source of the figure according to the exhibit. So we object on the ground that although it purports to be a summary of testimony, it is contrary to the testimony and not proper; also the introduction will be misleading and prejudicial.

The Court: If I am correct in assuming it is the contention of the government that this is a correct summary of the records, supplemented by the testimony of different witnesses, if the government so contends—and I assume the government does or the government would not have offered the exhibit—if it is not correct, it would be in the same

(Testimony of Ray Weaver.)

position as any of these exhibits which are in evidence. Counsel can show at the proper time, if they can, that any of these exhibits are not accurate, so the objection will be overruled and the exhibit will be admitted in evidence. [2118]

Mr. Avakian: Perhaps I did not make myself clear. The witness said this is a summary except as to totals he made, that the items are taken from the evidence. It is not taken from the evidence. It is picked out of thin air.

The Court: You can meet that situation later if it exists.

Mr. Campbell: Reading from plaintiff's Exhibit 169, "B. & R. Smoke Shoppe, Assets and Liabilities December 31, 1943; December 31, 1944; December 31, 1945, and December 31, 1946." Without reading these specific items as set forth herein at this time, the exhibit reflects a net worth of B. & R. Smoke Shoppe as of December 31, 1943, of \$18,413.36; as of December 31, 1944, \$18,231.47; as of December 31, 1945, \$23,344.66; as of December 31, 1946, \$23,293.39."

Mr. Avakian: Your Honor, we would request in conjunction with that partial reading that the items of cash on hand, Exhibit 111A, and Mr. Pritchett's testimony likewise be read to the jury.

The Court: It is not necessary at this time.

Q. Now, Mr. Weaver, in connection with your examination of the various books and records here, did you make an examination of the drawing account of Elmer Remmer on the books of Cal-Neva,

(Testimony of Ray Weaver.)

Inc., for the period December 31, 1943, to December 31, 1946, inclusive? A. Yes, I did. [2119]

Q. And in connection with that examination did you analyze the records of that corporation which are here in evidence? A. Yes, I did.

Q. And in connection with such examination and analysis, have you drawn up a schedule reflecting the results of your examination and analysis of that account? A. I have.

Q. And will you produce that? I will ask you to have this document, consisting of some four pages, be marked for identification as government's 172 for identification. Showing you 172 for identification, is this the schedule and supporting schedules with reference to that matter to which you have referred? A. Yes.

(Jury and alternate jurors admonished and short recess taken at 10:55 a.m.)

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. I am going to refer you, Mr. Weaver, to plaintiff's Exhibit 146, which purports to be the books of account of Cal-Neva, Inc., and ask if you will——

(Testimony of Ray Weaver.)

Mr. Avakian (Interrupting): They were introduced as such and they don't purport to be—they were introduced by [2120] the government and we object to the use of the word "purport."

The Court: Objection overruled. I don't believe there is any purpose in using the word. They are here as records of the Cal-Neva.

Mr. Campbell: I do not mean——

The Court (Interceding): I understand you do not mean to cast any reflection as to the exhibit.

Q. I ask you to turn to the account denominated E. Remmer, which is account No. 10, under heading of "Assets" in that record. That is, is it not, Mr. Weaver, the account that has heretofore been referred to as the drawing account of Elmer Remmer? A. Yes, that is correct.

Q. Of which the debits and credits have heretofore been read into evidence? A. Yes.

Q. Now I direct your attention to the fact—it is a fact—that that record shows a year-end debit balance in that account as of December 31, 1943, of \$10,652.77, is that correct?

A. That is correct.

Q. And debit balance as of December 31, 1944, of \$17,886.66; is that correct?

A. That is correct.

Q. And debit balance as of the year-end December 31, 1945, of \$25,361.68; is that correct? [2121]

A. Yes, that is correct.

Q. And a debit balance as of the year-end December 31, 1946, of \$18,148.22.

(Testimony of Ray Weaver.)

A. That balance is not entered in the books as such, but that is the balance——

Q. Well, is that amount reflected by adding the credits and debits as shown during the course of the year 1946? A. Yes.

Q. And taking into consideration the debit balance as of December 31, 1945?

A. That's right.

Q. Now in connection with those debit balances as shown by the books, have you on plaintiff's Exhibit No. 172 for identification set forth certain accounting adjustments to those year-end balances to arrive at a corrected balance in that account as of each of the year-ends?

A. Yes, I have. I might add that they are not really adjustments. They are additions and deductions to bring into the proper year any transactions that might affect the account. For example, withdrawals might be made in the year 1945 and might not be entered on the books until the year 1946. Actually, to represent the proper balance of the account, the transaction should be reflected in the year 1945, and those are the types of adjustments that were made in that work sheet.

Q. And in making such adjustments on the work sheet, was that [2122] for the purpose of arriving at the correct balance as of the end of each year?

A. That is correct.

Q. And in that connection have you set forth upon that schedule each of the items by which you adjusted each of the year-end balances?

A. Yes, I have.



(Testimony of Ray Weaver.)

Q. And have you also set forth upon the supporting documents, or the following pages in this Exhibit 172 for identification, an explanation as to each such adjustments as to the source in the records which you examined of the items utilized?

A. Yes, I have.

Q. And have you also set forth in this exhibit the charges and credits by years to the account of Elmer Remmer, known as account No. 10, to which your attention has been directed?

A. Yes, I have.

Mr. Campbell: At this time I will offer in evidence plaintiff's Exhibit 172 for identification.

Mr. Avakian: We have no objection, to your Honor. If the prosecution has an extra copy, we would appreciate the use of it.

The Court: It will be admitted in evidence, 172.

Mr. Campbell: I think we can make that available subsequently.

Q. Mr. Weaver, I will ask you also if, in connection with the [2123] adjustments to this account, you had some correspondence with Mr. Semenza, the accountant who kept these records, as to various of the entries on this account which you were examining? A. Yes, I did.

Q. Will you produce that correspondence? Now you have produced here a group consisting of some four letters, two of which purport to be carbon copies of letters written by you, and two of which appear to be original letters of the firm of Semenza & Kottinger. Is this the correspondence to which you refer? A. Yes, it is.



(Testimony of Ray Weaver.)

Mr. Campbell: May this be marked for identification?

The Clerk: 173.

Q. Referring, Mr. Weaver, to the carbon copies, which are a portion of this exhibit, are these copies of letters forwarded by you to the firm of Semenza & Kottinger? A. Yes, they are.

Q. And are the original letters the letters received by you in response to your communications?

A. Yes, they are.

Q. Incidentally, in connection with Exhibit 173 for identification, referring to original letter dated November 11, 1949, I observe here some pencil written date. Do you know by whom that was written? [2124]

A. Yes, that was made by me.

Q. It was some memorandum of your own?

A. Yes, that is correct, as well as the pencilled notation of the year 1946, the second sheet.

Mr. Golden: We overlooked that. We had better take a look at it.

Mr. Campbell: With the exception of the pencilled written notations which may be obliterated, we will offer this in evidence as Exhibit 173.

Mr. Avakian: We have no objection to the pencilled notation remaining in this exhibit so long as Mr. Weaver put that on.

Mr. Campbell: Very well.

The Court: The exhibit then is admitted in evidence, No. 173.

Q. Now directing your attention to plaintiff's

(Testimony of Ray Weaver.)

Exhibit 172, which you have identified as the schedule which you have prepared reflecting the adjustments to the year-end balances of the Elmer Remmer drawing account of Cal-Neva, known as account No. 10, what did you find to be the corrected balance of that account as of December 31, 1943?

A. \$23,152.77.

Q. Was that a credit or debit balance?

A. That was a debit balance on the books of Cal-Neva.

Q. Will you state what is meant by debit balance, applying to [2125] a drawing account?

A. A debit balance on the books of Cal-Neva would represent the amount receivable from Mr. Remmer.

Q. So far as Mr. Remmer is concerned, it would represent an amount which he owed to Cal-Neva?

A. That is correct.

Q. Now your attention is directed to the fact that the balance as shown by the book itself is a debit balance of \$10,652.77. Will you state what adjustments you made in your schedule to arrive at a debit balance of 23 thousand some odd dollars?

A. I added thereto three items, one of which represented a credit to Mr. Remmer in 1943, which, by looking at the detail of the transactions, actually was not received by Cal-Neva until the calendar year 1944; therefore, should not have been credited to them until the subsequent year; therefore, a debit balance of this account should be increased by that amount by the end of 1943. Also was added to that a similar item for exactly the same

(Testimony of Ray Weaver.)

reason, in amount of \$2,000. Also there was added to it an amount which was charged to him in 1945 for loans made by him to one Albert Villaudy in 1941 and 1943. Therefore, since the charges made in 1945 were amounts which had been made prior to 1943, that charge should also be reflected in the year-end 1943 balance. Adding those three items to the debit balance already on the books of that date gave me the correct debit [2126] balance, \$23,152.77.

Q. And the source of information in each of those instances was from the books of Cal-Neva, Inc.?

A. Yes, or in one or two instances from the books and records of 110 Eddy, which had offsetting items.

Q. In 1944 will you state what adjustments were made to arrive at the correct debit balance in the Remmer drawing account?

A. In the year 1944, to the balance on the books I added one item of \$8,000, which is the same item I added in the year 1943, for the loans made to Mr. Albert Villaudy in 1941 and 1943. Those items were still not reflected in the balance of Mr. Remmer's account at the end of 1944 and the entry was not made on the books of Cal-Neva until the year 1945, although the transaction itself took place in the years 1941 and 1943; therefore, should have been reflected in the year-end 1944 balance, as well as year-end 1943 balance, so the same adjustment was made of that item by adding \$8,000 to the debit balance already in the books.

(Testimony of Ray Weaver.)

Q. You say you add \$8,000 to the debit balance. The effect, is it not, is to show that Mr. Remmer owed that amount additional to the Cal-Neva, Inc., account of drawings? A. That is right.

Q. What other adjustments?

A. Then I made two deductions from the balances of his account, one was a credit, which was entered on the books of 1945 in [2127] amount of \$24.98, for an item explained on the records as having been charged to him in error in 1944. Since the original error was made in 1944, I also made the adjustment of the error in the same year. The other adjustment represents a deduction from the balance of \$7,500 for a credit made to his account on the books in the year 1945, with the explanation "For cash advanced by Mr. Remmer to Cal-Neva" in the prior year, and since the advance was actually made in the prior year, the entry should also have been made there, and that is the reason for that adjustment.

Q. And with those adjustments you arrived at the debit balance as shown on this exhibit 172 at the year-end December 31, 1944, of \$18,361.68; is that correct? A. That's right.

Q. Now with relation to the year 1945, will you state what adjustments you made as reflected in the schedule?

A. For the year 1945, in addition to the debit balance on the books, I also added thereto the following debit items: Under date of April 30, 1946, the books showed a debit to Mr. Remmer's account

(Testimony of Ray Weaver.)

in amount of \$51,486.34, with the explanation, "For cash advanced to Mr. Remmer in 1945." Since the advance was made to him in the year 1945, it should be applied in the balance at the end of the calendar year 1945 and that is the purpose of that adjustment.

Q. Yes. [2128]

A. In addition I added thereto an amount which was entered on Cal-Neva books on April 30, 1946, as a charge to the account, in amount of \$7,000, with the explanation, "An amount charged to Bank Club in error in 1945," which would indicate that for 1945 the loan as charged was made to the Bank Club for \$7,000, which should have been made to Mr. Remmer personally. Since the transaction was in 1945, I made the adjustment of the year-end 1945 balance.

Q. Yes.

A. A further adjustment was made to reduce the balance at the end of the year 1945 in amount of \$2215.69, for this reason—on April 30, 1946, Mr. Remmer's account was credited in that amount with the explanation, "For bad check included in cash received by Mr. Remmer." Since that cash, by the explanation was a prior entry, had been explained as having been received by Mr. Remmer in the year 1945, the checks included therewith would also have been received in 1945 and any bad checks included in that amount should have been reflected in the balance at the end of the year 1945, so that adjustment was also made for the year 1945.

(Testimony of Ray Weaver.)

Q. Now what adjustments did you make in the debit balance shown by the books in that account for the calendar year 1946?

A. For the year 1946 I added to the debit balance shown on the books an amount of \$97,300, because the books showed an entry on April 30, 1947, debiting Mr. Remmer's account with [2129] that amount, with the explanation, "For items credited to Mr. Remmer in error in 1946." Since the original error was made in 1946, my correction was also made to the balance of the account at the end of the year 1946. In addition I deducted from the account balance these two items—one resulting from an entry made on the books on April 30, 1947, with the explanation, "Credited to E. Remmer for cash advanced by him for 1946." Since the cash was advanced in the year 1946, this entry was made to reflect that advance in the year-end balance of his account. A similar correction was made in the amount of \$34,705.83 because of an entry made on Cal-Neva books under date of April 30, 1947, with the explanation, "Credited to E. Remmer for additional cash contributed by him in 1946," and since the contribution was made in the year 1946, the credit should be reflected for the year-end 1946 balance of this account. After those adjustments, the corrected debit balance of his account at the end of 1946 was \$60,742.39.

Mr. Campbell: At this time I wish to read plaintiff's Exhibit 173, carbon copy of letter dated San Francisco, California, October 31, 1949, addressed

(Testimony of Ray Weaver.)  
to Semenza & Kottinger, Title Insurance Building,  
Reno, Attention Lawrence J. Semenza;

(Reads—" \* \* \* reference C-39 \* \* \*")

Q. If I may interject at this time, in accounting practice, Mr. Weaver, what does "Reference C-39" refer to?

A. The reference indicates the book and page of the book of [2130] original entry from which the entry is posted to the ledger.

Mr. Campbell: Very well.

(Continues reading.)

Second, a letter dated November 11, 1949, on the letterhead of Semenza & Kottinger, Certified Public Accountants, Reno, Nevada, re Cal-Neva, Inc.

(Reads.)

Next is carbon copy of letter November 14, 1949, San Francisco, California, to Semenza & Kottinger, Title Insurance Bldg., Reno, in re: Cal-Neva, Inc.

(Reads.)

Next original letter dated November 16, 1949, on the letterhead of Semenza & Kottinger.

(Reads.)

The Court: I think we will take our recess at this time.

(Jury and alternate jurors admonished and recess taken at 11:50 a.m.)

January 28, 1952, 2:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Weaver, there has been evidence introduced here by way of checks relative to certain improvements made at the offices and warehouse at 50-52 Mason Street. Have you examined the records and the checks produced here relative to such improvements? [2131] A. Yes, I have.

Q. And in that connection have you drawn up, at my request, a schedule setting forth such expenditures? A. Yes, I have.

Q. Will you produce that. Is this document which you handed me the schedule which you so prepared? A. Yes, sir.

Q. And are the exhibits which are referred to here by number exhibits which are in evidence?

A. Yes, they are.

Mr. Campbell: I will ask to have this marked for identification as 174 for identification.

Q. And in connection with this schedule, have you also at my request, set up a schedule of reserve for depreciation? A. Yes, I have.

Mr. Avakian: I might say if Mr. Campbell in-



(Testimony of Ray Weaver.)

tends to offer that, we have no objection to its being received in evidence.

Mr. Campbell: Very well, I will offer it in evidence as plaintiff's Exhibit 174.

The Court: Admitted.

Mr. Avakian: I wonder if at the end of the day these exhibits introduced today may be released to us for the purpose of having photostats made?

Mr. Campbell: No objection. [2132]

Q. I am going to hand you Exhibit 174, Mr. Weaver. Now I observe that at the top of the page you have listed under various columns first the exhibit number. To what does the exhibit number refer, not each specific one, but in general?

A. To the number given to the exhibit in this court as exhibit introduced in evidence.

Q. And with relation to the items appearing on the top half of the page, starting with 132D, I believe is the first item, to 135E, do you recall the nature of those exhibits?

A. They all represent cancelled checks.

Q. The next item bears date, I presume that is date of the check? A. Yes, that is correct.

Q. And the name of the payee, followed by a column you have headed "testimony P. No.," does that refer to the page upon which the check was identified for the purpose of the check?

A. Yes, I believe most of those refer to the testimony of Mr. Maundrell.

Q. And that was testimony given in this court?

A. That is correct.

(Testimony of Ray Weaver.)

Q. And the final column being "Amounts." Now in connection with your examination of the records and exhibits of office improvements, fixtures and equipment of the offices and warehouse of 50-52 Mason Street, did you give effect to the acquisition in 1944 of the safe as set forth in Exhibit 139 in evidence? [2133]

A. Yes, I did.

Q. Now with regard to the year 1944, what is the total amount of acquisitions which your examination disclosed by way of office improvements, fixtures and equipment for 50-52 Mason Street?

A. \$425.00.

Q. Which is the safe referred to in Exhibit 139?

A. Yes, that's right.

Q. Now what were the acquisitions in 1945 by way of office improvements, fixtures and equipment, as found in your examination?

A. They amounted to \$7,489.76.

Q. So that the balance of such improvements, fixtures and equipment represented what amount as of the end of 1945?

A. \$7,914.76.

Q. And what were the amount of 1946 acquisitions as found by your examination?

A. \$1,110.44.

Q. So what did you find to be the total amount of office improvements, fixtures and equipment of 50-52 Mason Street as of December 31, 1946?

A. \$9,025.20.

Q. Mr. Weaver, I will ask you if it is customary and proper accounting procedure, with regard to office equipment, improvements and fixtures, to set

(Testimony of Ray Weaver.)

up a reserve for depreciation, that [2134] is to say, setting up of a reserve to offset the age and obsolescence of equipment? A. Yes, it is.

Q. And in connection with the acquisitions during the years 1944, 1945, and 1946 of these improvements, fixtures and equipment for the premises known as 50-52 Mason Street, have you set up a schedule of reserve for depreciation on this exhibit which you hold in your hand?

A. Yes, I have.

Q. Let me ask you first the basis upon which you set up such reserve for depreciation?

A. The reserve is based on the ten-year life, which is customary in cases of office equipment, in the absence of any special circumstances.

Q. That is the customary period that is set up for total depreciation? A. Yes.

Q. And it is the practice, is it not, where a ten-year period is set up as the period of depreciation, to set up a reserve annually for one-tenth of the cost of the improvement, where such ten-year period be used? A. That is correct.

Mr. Avakian: May the answer be stricken so I may make an objection?

The Court: Yes. [2135]

Mr. Avakian: Objected to as leading and suggestive and particularly on direct examination of an expert witness. Under the expert laws, the testimony should come from the expert witness rather than the attorney who has produced him. What is customary accounting is a matter of peculiar expert

(Testimony of Ray Weaver.)

testimony and for Mr. Campbell to state what is customary and get a yes answer, is not proper direct examination. He should have the man tell us in his own words what customary accounting is.

The Court: This answer may stand. Try to avoid leading questions.

Q. What is your answer, Mr. Weaver?

(Question and answer read.)

Q. Was that the method which you used in setting up the reserve for depreciation which is shown on the schedule which you hold in your hand?

A. Yes, the yearly acquisition, which also follows general practice, in the year of acquisition, depreciation is computed for the period of six months.

Q. And is that the usual practice?

A. Yes.

Q. And in that regard what was the amount of depreciation reserve that you set up as of December 31, 1944?      A. \$21.25.

Q. And what amount did you set up as of the year-end, accumulated [2136] as of year-end December 31, 1945?

A. By that time the accumulated depreciation amounted to \$438.23.

Q. And what was the amount of the accumulated depreciation which you set up in your schedule as of the year-end December 31, 1946?

A. \$1285.22.

Q. Now in regard to the assets which you have set forth on this schedule and as shown by the

(Testimony of Ray Weaver.)

checks to which you have referred, Exhibits 132D to 135E, as appear here on the schedule, will you state upon what bank account they were drawn?

A. They were drawn on the bank account in the Crocker First National Bank, that was carried in the name of Harold Maundrell and Elmer Remmer.

Q. That is the bank account, the ledger sheets of which are here in evidence?

A. Yes, that is right.

Q. As I recall, Mr. Weaver, the testimony was that that bank account was maintained with reference to the affairs of the Menlo Club, Tiny's Waffle Shop and the Menlo Bar, is that correct?

A. That is correct.

Q. Now what, if any, entries did you find in the records of any of those concerns, other than by way of cancelled checks and their corresponding stubs, which have been produced here in [2137] evidence, as to these expenditures?

A. The checks were entered in the check register, but there was no entry in the general ledger of any ledger account nor any asset accounts set up.

Q. Incidentally, in that connection, with reference to the records maintained for the Menlo Club, the Menlo Bar and Tiny's Waffle Shop, will you state what type of records, from accounting theory and practice, were kept? That is to say, were they double entry records, single entry records, or what?

A. I would call them neither double entry nor single entry. They are actually merely a record of

(Testimony of Ray Weaver.)

receipts and disbursements and supplemented by a few ledger accounts.

Q. Were the books which you examined of a nature from which a trial balance as of any period could be drawn?

A. No, not without supplementing by outside information.

Q. But from the books and records themselves?

A. No.

Q. Now so far as your examination of the various records of the various concerns are involved, did you find anywhere, other than by way of the cancelled checks and the corresponding check stubs, any asset account reflecting the acquisition of the office improvements, fixtures and equipment which is set forth on the schedule which you hold in your hand?

A. No.

Q. Now, Mr. Weaver, have you also, at my request, drawn up a [2138] schedule with relation to the acquisition and disposition of certain Gallagher & Burton brand whiskey?

A. Yes, I have.

Q. And you have that schedule with you?

A. Yes.

Q. You have handed me a document consisting of two pages headed "Gallagher & Burton Whiskey." Is that the schedule to which you refer?

A. Yes, it is.

Mr. Campbell: I will ask to have this document marked for identification as 175 for identification.

Q. Mr. Weaver, handing you plaintiff's Exhibit

(Testimony of Ray Weaver.)

175 for identification, I will ask you the source of the figures set forth thereon?

A. These figures are based on testimony of Mr. Barengo, the Sierra Wine and Liquor Company, and Mr. Stewart of the Nevada Transfer Warehouse Company.

Q. Are they also based upon the records and exhibits produced by those gentlemen?

A. Yes, that's right.

Q. Now in connection with the figures set forth hereon, relative to the cost prices per case of whiskey and the allocation of the costs, to what decimal point did you carry out the per case cost?

A. I carried the per case cost out to five decimal places. [2139]

Q. And in connection with the preparation of this Exhibit 175 for identification, did you also examine the books and records of Cal-Neva, Inc.?

A. Yes.

Mr. Campbell: I am going to offer this in evidence as Plaintiff's 175.

Mr. Avakian: Your Honor, we object to proposed Exhibit 175 because of one item, and one item only, and that is that there is shown here in the building up as a part of Mr. Remmer's equity in this liquor an item of \$7479.22, described as 1944 floor stock tax. Your Honor will recall the evidence in that regard shows that the Cal-Neva corporation filed a floor stock tax return on which a tax—I don't remember the exact amount, but that amount was approximately that—was paid. There

(Testimony of Ray Weaver.)

was no showing whatsoever in this case that Mr. Remmer paid any portion of that money. Now your Honor will appreciate, from what has been said in the opening statement of counsel here, that in building up income on the net worth theory, it is the cost to the defendant, it is the money he put into the assets that entered into determining his equity for net worth purposes. If the tax on this liquor was not paid by Mr. Remmer, it is not a part of his equity. There is no showing in this evidence that Mr. Remmer paid one penny of taxes. It is shown that the Cal-Neva corporate tax return was filed. This is not Mr. Remmer's individual return, but the Cal-Neva corporation [2140] floor stock on which that tax was paid. There is no evidence whatsoever he paid any portion, either directly or on behalf of the corporation, so that inclusion of that amount, \$7479.22, as a part of Mr. Remmer's increase in net worth, is contrary to the evidence. I am sure your Honor is aware, as we all are, that it is proper for an expert witness to assume facts which are covered by the evidence, but it is not proper to assume facts which are not covered by the evidence, and if your Honor would care, I could cite you authority on that, Wigmore has a statement specifically in point. We object to the inclusion in this proposed exhibit of a substantially large item which is not supported by any evidence whatsoever, and the basis of our objection is because of that fact, this proposed exhibit con-



(Testimony of Ray Weaver.)

tains portions which are contrary to and inconsistent with the evidence.

Mr. Campbell: I will ask a further question and I think we can clarify that very well. May I have the exhibit?

Q. Mr. Weaver, directing your attention to plaintiff's Exhibit 175 for identification, and the item to which counsel has directed attention, namely the item of 1944 floor stock tax in amount of \$7479.22, will you state the basis upon which that item was included in this schedule?

A. Yes. There is no record whatsoever on the books of Cal-Neva that floor tax in that amount was paid. The floor stock tax return itself has a notation on it showing that the amount [2141] paid as was, was paid in cash, not by check.

Q. And it was on that basis, under my instructions, that that was included?

A. Yes; also on the basis that undoubtedly Mr. Remmer—

Mr. Avakian: Object to any "undoubtedly" statements.

Mr. Campbell: Very well, the answer can stop there. I offer the exhibit in evidence.

Mr. Avakian: It still doesn't show Mr. Remmer paid the tax. If this is an equity of Cal-Neva, it has nothing to do with the defendant. Unless the defendant paid it, it is not his net worth, not his equity.

The Court: Objection will be overruled. Admitted in evidence.

(Testimony of Ray Weaver.)

Q. Now, Mr. Weaver, I return to you plaintiff's Exhibit 175. I call your attention first to the fact that this schedule apparently refers to two carloads of whiskey, one which you have denominated first carload, and the other second carload, is that correct? A. Yes, that is correct.

Q. Now with regard to the first carload, you have set forth on the schedule in regard to that 1197 cases certain figures of cost and have arrived at a cost price per case of that whiskey. Will you state what that cost price was? A. Per case cost?

Q. Yes. [2142] A. \$27.68095.

Q. What costs were taken into consideration in arriving at that cost?

A. That included the invoice cost FOB shipping point of \$24.44 a case, amounting to \$29,254.68; freight and demurrage in total amount of \$1006.62; State tax of \$1.20 a case, or a total of \$1436.40, and handling charge of \$1.20 a case, or a total of \$1436.40, or a total cost of first carload of \$33,134.10.

Q. And from that you found your per case cost, the figure you have given of \$27.68095?

A. That's right.

Q. Now with regard to that first carload, have you set forth on this schedule and taken into account the number of cases which were delivered in 1943, based on the testimony here, and the number of cases which remained then on hand at the end of the year 1943? A. Yes, I have.

Q. And have you also set forth the accumulated costs in 1944 with reference to the balance of cases

(Testimony of Ray Weaver.)

of whiskey remaining as of the first of the year and the delivery of those cases during 1945?

A. Yes, I have.

Q. Now as of the end of 1943, December 31, 1943, according to your schedule, how many cases remained on hand? [2143]

A. Of the first carload there were 147 cases left, with a cost of \$4069.10.

Q. And during the year 1944 were any of those cases disposed of, according to your schedule?

A. No, none.

Q. Were there additional costs during that year?

A. Yes, during the year 1944 there was floor stock tax paid on it.

Q. What amount? A. \$918.31.

Q. So as of December 31, 1944, what was the cost price of the 147 cases of the first carload remaining on hand? A. \$4097.41.

Q. And were all of those delivered in 1945, according to the records which you have examined?

A. Yes, they were.

Q. So that none of the first carload of whiskey remained on hand as of December 31, 1945, is that correct? A. That is correct.

Q. Now in relation to the second carload of whiskey, I believe the evidence showed consisted of 1194 cases. Did you find the cost price per case of that whiskey? A. Yes, I did.

Q. And what was that?

A. \$27.72494. [2144]

(Testimony of Ray Weaver.)

Q. What cost did you take into consideration in arriving at that cost per case?

A. That represented invoice costs FOB shipping point of \$24.44 a case, or a total of \$29,181.36; freight and demurrage of total of \$1006.62; State tax of \$1.20 a case, or a total of \$1432.80; handling charge of \$1.20 a case, or a total of \$1432.80, and draying of \$50, making a total cost of \$33,103.58 for the 1194 cases.

Q. Now according to the records which you examined in this connection, was any of that whiskey delivered in 1943?

A. No, it was all on hand at the end of 1943.

Q. Now during the year 1944 were any additional costs made in connection with that whiskey?

A. Yes, floor stock tax plus a penalty as paid herein. We have taken into account here only the tax itself of \$7479.22.

Q. So that with that addition the total costs of the 1194 cases of whiskey became what amount?

A. \$40,582.80.

Q. And what would that be per case?

A. \$33.49894.

Q. And according to the records and testimony you heard, was a portion of that whiskey delivered in 1944?

A. Yes, in 1944 two hundred cases were delivered.

Q. Incidentally, in connection with the delivery of both the first and second carloads, have you set forth in a supporting [2145] schedule on the second

(Testimony of Ray Weaver.)

page of this exhibit, the dates and to whom the whiskey was delivered?      A. Yes, I have.

Q. So that as of December 31, 1944, there were on hand how many cases?      A. 994 cases.

Q. Having a cost price of what amount?

A. \$33,785.01.

Q. During the year 1945 were any of those cases delivered and disposed of?

A. Yes, 194 cases were delivered.

Q. Having a cost price of what amount?

A. \$6,593.86.

Q. So as of December 31, 1945, there were on hand how many cases of the original carload?

A. 800 cases.

Q. Having a cost price of what amount?

A. \$27,191.15.

Q. Now in that connection were there received back into the whiskey on hand from the second carload certain cases which had theretofore been delivered in a prior year?

A. Yes, 100 cases were received back in 1946.

Q. From whom?      A. From Cal-Neva.

Q. So that there were then on hand how many cases? [2146]      A. 900.

Q. And were those cases, according to the records you examined, transferred to any one in 1946?

A. Yes, 900 cases were transferred to the Bank Club in 1946.

Q. And what was the total cost represented by those cases?      A. \$30,590.04.

Q. Now in connection with your examination of

(Testimony of Ray Weaver.)

the various books and records, and particularly of the books and records of Cal-Neva, Inc., I will ask you if you found any entries in the books and records of Cal-Neva as to the payment of any of the costs with relation to this whiskey, either by way of its original acquisition or subsequent costs accruing on the whiskey, or the receipt by Cal-Neva of any of the money for which the whiskey was sold?

A. No, there were no entries in connection with this whiskey that appeared in the books of Cal-Neva whatsoever, except one entry, indicating the purchase by Cal-Neva from Mr. Remmer of a lot of 100 cases.

Q. But other than whiskey purchases by Cal-Neva, Inc., as shown on their books, did you find any other reference to either the payment costs or the receipt of proceeds with relation to this whiskey?

A. No, none whatsoever.

Q. Now what was the amount of the whiskey which you refer to as having been reflected in the Cal-Neva books as having been [2147] delivered to Cal-Neva?

A. Represented a lot of 100 cases. I believe it was 100 cases, I am not sure of the amount.

Mr. Avakian: Your Honor, may we have the record then as the best evidence, rather than his hazy recollection? The records of Cal-Neva, Inc., have been available to the government. They are in evidence here.

(Testimony of Ray Weaver.)

Q. Mr. Weaver, can you refer to the Cal-Neva records and to where that entry appears?

A. Yes.

Q. Would you do so. What book is that in?

A. Under date of September 27, 1944, on page 113 of the check register.

Q. That is exhibit—

A. 146. There is an entry E. R. Remmer, 27th day of September, check No. 6435, and the amount is \$6,896, and it is charged to liquor and whiskey purchases. That refers to the purchase of—

Q. Are you reading from the book?

A. No, but I know that refers to purchase of Gallagher & Burton whiskey.

Mr. Golden: That is not responsive. The question is what the books show.

Q. Mr. Weaver, will you state in what manner you identify that as referring to the Gallagher & Burton whiskey? [2148]

A. There might have been a notation on the check itself. If I could see the original check.

Mr. Campbell: All right, we will pass that and if you will look for it during the afternoon recess we will come back to it.

Q. At any rate, that is the item which you now identify referring to that acquisition?

A. That is correct.

Q. Incidentally, in connection with your examination of the records of Cal-Neva, will you state, based upon such examination, what you found the practice of Cal-Neva, Inc., to be relative to the

(Testimony of Ray Weaver.)

payment of bills, other than pay items; that is to say, were they paid by cash or by check?

A. Practically all their bills were paid by check.

Q. Now in connection with your testimony relative to the drawing account of Elmer Remmer, account No. 10 in the ledger which is before you, you made reference to certain items concerning which you made adjustments, having to do with loans totalling some eight thousand dollars to Albert Villaudy, which were charged against Mr. Remmer's account, do you recall that? A. Yes, I do.

Q. And in that connection I will ask you if you made examination and investigation for the purpose of determining when, if at all, such loans were repaid to Mr. Remmer? Answer that [2149] yes or no. A. Yes, I did.

Mr. Campbell: I wonder if the clerk would produce at this time a certificate received from the doctor of Albert Villaudy.

Mr. Golden: Your Honor, this pertains to some matters that apparently arose about a week ago while this case was in recess. We would like to have an opportunity to talk it over among ourselves.

Mr. Campbell: May I suggest I mark these for identification at this time, so counsel may see them?

The Court: All right.

Q. Mr. Weaver, I show you three checks and ask you from what source you received these?

A. I received these from Mr. Villaudy.



(Testimony of Ray Weaver.)

Q. I will ask that these be marked for identification as one exhibit, as 176 for identification.

(Jury and alternate jurors admonished and recess taken at 3:00 o'clock for 15 minutes.)

3:15 P.M.

(Defendant present with counsel.)

(In the absence of the jury.)

(NB 335 PP 27-33.)

3:25 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.) [2150]

MR. WEAVER

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

The Court: May I understand that the record may show the defendant was present during the past discussion.

Mr. Golden: Yes, your Honor.

Mr. Campbell: If the Court please, it has been stipulated by counsel that two checks which have been received in evidence as plaintiff's Exhibit 176 are checks of Albert Villaudy.

The Court: Isn't it correct to state by stipulation they are admitted?

(Testimony of Ray Weaver.)

Mr. Campbell: Yes, by stipulation they are admitted in evidence as plaintiff's Exhibit 176; that the checks are repayments to the defendant, Elmer Remmer, by Albert Villaudy in the amounts and upon the dates as set forth in the two checks, is that correct?

Mr. Golden: That is correct, and for clarifying—

Mr. Campbell: I am going to read them. The first one is check bearing imprint Albert Villaudy, No. 321, September 6, 1944, "Pay to the order of Mr. Elmer Remmer \$2,600," signed A. Villaudy, drawn on the Melrose Brae Branch Hollywood, California, Bank of America and endorsed Elmer Remmer and Harold H. Maundrell. The second is similar check, being No. 441, dated January 8, 1945, pay to the order of Elmer Remmer, two thousand dollars, and signed by A. Villaudy, bearing the endorsement [2151] of Elmer Remmer and F. W. Griss.

Q. Mr. Weaver, are you familiar with the personal exemptions allowed by law to a married person without dependents for the years 1935 and 1946, inclusive? Will you answer that yes or no?

A. Yes, I am.

Q. And have you, at my request, set forth on a schedule the amount of such exemptions as allowed by the Internal Revenue Code for each such years?

A. Yes, I have.

Q. Will you produce it. That is the document which you have just handed me?

A. Yes.

(Testimony of Ray Weaver.)

Mr. Campbell: I will ask that this be marked for identification as 177 for identification.

Q. In that connection, Mr. Weaver, I asked you upon this schedule to place a sub-total with reference to the years 1935 to 1941, inclusive, showing the total amount of exemption provided by law of a married person in those seven years. Have you done that upon this schedule?

A. Yes, I have.

Mr. Campbell: We offer it as 177.

Mr. Avakian: Your Honor, with respect to that, we offer the objection on these grounds: first, that it is incompetent, irrelevant and immaterial insofar as it relates to years prior to the indictment period and also to a year subsequent to the [2152] indictment period; secondly, that it relates to matters which are not covered by the evidence, namely matter of dependents during that entire 14-year period, and the third ground is simply for the purpose of obtaining from this Court, in the event there may be other offers, both by the prosecution and the defense, as to the extent to which an expert witness may present testimony based on his interpretation of the law, and for that purpose we want to object now, for the purpose of our own cross-examination and on direct testimony, as to whether the Court—and we know it is within the Court's discretion—is going to permit a witness to testify as to what the law is, and the third ground of the objection then is that the substance and contents of the exhibit

(Testimony of Ray Weaver.)

contain matters of law and this is the witness' interpretation of the law.

Mr. Campbell: I might state, your Honor, that this is a matter of law set forth by law and the amount of personal exemption—I am offering this exhibit merely as a convenience. So far as the interpretation is concerned, it is not a matter of interpretation. The law sets forth in round figures what the exemption is for each year. As to the year 1947 feature, I have no objection to strike that from the exhibit, if counsel has serious objection to that.

Mr. Avakian: I do not know what the materiality of it is, your Honor. I would not make the objection if I was not serious. If it isn't material, it shouldn't be in. If counsel [2153] can point to the materiality—

Mr. Campbell: The year 1947 may be stricken.

The Court: The exhibit may be admitted in evidence, 177. I assume from remarks of counsel that there is no question as to the accuracy of the document. If there was, we might have it checked.

Mr. Avakian: No, I don't question the accuracy in one respect. In another respect, it is a matter of interpretation and analysis of evidence as to whether there were any dependents.

The Court: That is the thought I had in admitting the exhibit in evidence, that you did not raise any question as to the accuracy of the scheduled exemptions.

Mr. Campbell: The materiality or application

(Testimony of Ray Weaver.)

to the evidence here I think is the basis of the objection.

Mr. Avakian: Primarily I was interested in knowing to what extent this Court would permit a witness to set forth in an exhibit of what the law means.

The Court: I do not understand this to be an expressed opinion of what the law means or interpretation of the law. It is merely a recitation of a statutory matter.

Mr. Avakian: It isn't that easy. A grammar school child couldn't do it. It takes some one who reads difficult [2154] language to go through the Internal Revenue code and read what is contained in there.

The Court: Well, that is the basis of my ruling. I don't intend to go much farther than that.

Q. Now, Mr. Weaver, during the course of your investigation of this case, both as to the work done by you personally and by referring to the work done under your direction by other agents, did you attempt to ascertain whether or not, at any time before December 31, 1946, the defendant, Elmer Remmer, received any property or money—by property I refer to both real and personal—by means of any devise, bequests, inheritance or gift? Will you answer that yes or no?

A. Yes, I did.

Mr. Golden: May the answer go out?

The Court: The answer may go out.

Mr. Golden: My objection is it calls for conclu-

(Testimony of Ray Weaver.)

sion and also calls for an opinion in a field in which he is not an expert, as to what is devise, bequest and inheritance.

The Court: This question was merely whether or not he made an examination.

Mr. Golden: The question was did he, and others under his supervision, attempt to make an investigation as to whether any property was so received. Now that calls for conclusion.

The Court: He answered that he did make an attempt. The answer may stand. [2155]

Q. Will you state—without including in your answer to this question the results of your investigation—will you state the nature of the investigation which you made, the nature and its extent?

A. We determined the place of residence at the time of the death of the parents of both Mr. and Mrs. Remmer and examined the indexed records of the probate courts in both those locations.

Q. What other investigation did you make as to gifts or inheritances?

A. We spoke to the only living relatives of Mr. Remmer who has any considerable amount of property, and that was his brother—

Mr. Avakian (Interrupting): Now he is stating conclusion and opinion.

The Court: It may go out.

Q. State simply what investigation was made and not any conclusions or findings you made from it.

(Testimony of Ray Weaver.)

A. Well, we did talk to him, that was part of our investigation.

Mr. Avakian: May that be stricken?

The Court: That may stand.

Mr. Avakian: I am sorry—I thought he said he didn't talk to him.

Q. What other investigation did you [2156] make?

A. We saw an inventory of his mother's estate, which listed only one item of real property, and that was——

Mr. Avakian: Just a minute——

Mr. Golden: He was asked to tell what he did.

Q. Did you examine probate records?

A. Yes.

Q. Where? What counties?

A. In San Francisco County, where Mrs. Remmer——

Mr. Avakian: Just a moment—again stating conclusions.

Q. State what you examined.

A. We examined probate records in San Francisco County and Alameda County.

Q. During the course of that investigation, did you determine where Mr. Remmer's father's death had occurred? Answer yes or no.

A. Yes.

Q. And did you examine the probate records of that county? A. Yes, I did.

Q. And did you do the same with respect to his mother? A. Yes, I did.

(Testimony of Ray Weaver.)

Q. And did you examine members of his family?

A. Yes.

Q. Will you state whether or not you, and those under your direction, examined the records of banks and trust companies?

A. Yes, we did. [2157]

Q. I will ask you whether or not you examined into——

Mr. Avakian (Interrupting): Your Honor, these are all leading and suggestive. Can't the witness testify what he examined?

The Court: I think leading questions here might help to avoid your previous objections of keeping the witness from wandering away and making some conclusions.

Mr. Avakian: All the witness needs to do is to state what he did. He knows what he did.

The Court: The objection will be overruled. You may answer the question.

Mr. Campbell: I think he did answer the question.

Q. Did you, during the course of your examination and investigation, examine friends and business associates of Mr. Remmer?

Mr. Avakian: Just a moment, your Honor. We again object to that as calling for opinion and conclusion as to who are friends and who are business associates. If he examined particular people, he can name them, but the characterization leaves us uncertain as to who he talked to.



(Testimony of Ray Weaver.)

The Court: Objection overruled. You can go into it on cross-examination.

Mr. Avakian: It is calling for opinions and conclusion as to who are friends and who are business associates. [2158]

The Court: Objection overruled.

A. Yes, I did.

Q. Did you, during the course of your examination, make every effort within your ability to ascertain any and all of Mr. Remmer's properties, real or personal, and its source?

Mr. Avakian: Just a moment—object to that as calling for opinion and conclusion, particularly the portion as to the best of his ability.

The Court: Objection sustained.

Q. Will you state, Mr. Weaver, what other investigation, if any, you made for the purpose of determining the ownership of Mr. Remmer in property, real or personal, and the sources from which it was acquired, without stating what you found, but stating the nature of the investigation which you conducted?

A. I have made a summary that refers to that.

Q. Do you have that summary on hand?

A. Yes.

Q. Will you produce it. Now you have produced here a number of sheets, consisting of some nine pages, is that the summary to which you refer?

A. Yes, it is.

Q. Is this a summary to which you wish to refer

(Testimony of Ray Weaver.)

to refresh your recollection as to the exact nature of the inquiry which you made? [2159]

A. Yes, they are.

Q. I observe here, for the purpose of further identification, that you have set forth certain dates. Is that the date the particular inquiry or examination took place to which the notes refer?

A. It may be the date the inquiry took place or the date the reply was received to the inquiry.

Q. I take it then that some of your inquiries were made by correspondence, as well as by person?

A. Yes, that's right.

Q. Did this inquiry include matters of public records?

The Court: Just a minute—do you want to examine that?

Mr. Avakian: We do not care how you proceed, but we want to examine it.

Mr. Campbell: I have this before me to refresh my own recollection as to certain questions.

The Court: All right.

Q. Mr. Weaver, did you examine or cause to be examined any public records? A. Yes, I did.

Q. And will you state, as best you recall at this time, prior to refreshing your recollection from this document, what those records consisted of; that is, the nature of the records of what offices?

A. The offices of the recorder of San Francisco County and [2160] the county clerk in respect to both civil and criminal actions. The same records in the County of Alameda and Contra Costa County

(Testimony of Ray Weaver.)

and San Mateo County and San Joaquin County and in Washoe County, Nevada. Records from the recorder's office for periods that I can't recall off-hand of Los Angeles County.

Q. Did you examine other recorder's records?

A. That's all I remember.

Q. Of each of those counties that you have stated? A. Yes.

Q. And in that connection I will ask you if you examined the real property records of those counties in the recorder's office? A. Yes, I did.

Q. And will you state whether or not they also included probate records?

A. Only examined the probate records in the Counties of San Francisco and Alameda; except, perhaps in some smaller counties where those indexes might have included with others that are covered during the examination.

Q. I believe you stated that you also examined civil cases filed in certain counties, is that correct?

A. Yes, that is correct.

Q. In that connection, did you examine the files and records for those actions?

A. Yes, I did. [2161]

Q. Now, in connection with the ownership of property—I think, your Honor, before I pursue this line, the document should probably be made available to the witness because in some instances at least I can duplicate it without appearing to do so. May I suggest a recess.

(Testimony of Ray Weaver.)

Mr. Avakian: Will counsel trust us with it over night?

The Court: I don't think you should make that remark in that regard.

Mr. Avakian: It was an inquiry.

The Court: I know, but be a little more gentle in your inquiry.

Mr. Avakian: I was smiling I thought.

The Court: The smile doesn't go in the record.

(Jury and alternate jurors admonished and recess taken at 4:00 p.m.) [2162]

Tuesday, January 29, 1952—10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. WEAVER**

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Weaver, I am going to return to you plaintiff's Exhibit 178 for identification, which you stated yesterday you required to refresh your recollection as to questions asked you regarding the scope and extent of the investigation which you made, or was made under your direction, relative to the affairs of Elmer Remmer. I will ask you to state, without including in your answer what

(Testimony of Ray Weaver.)

your investigation disclosed, what, if any public or semi-public records you examined or caused to be examined?

A. We examined the records of the recorders for various counties.

Q. What counties?

A. Relative to either real estate purchases or sales in San Mateo County and San Francisco County and Alameda County and Contra Costa County and Washoe County and San Joaquin County and in Los Angeles County.

Q. All of those, with the exception of Washoe County, are in California?

A. That is correct. [2163]

Q. Washoe County is in Nevada?

A. Yes.

Q. All right, proceed.

A. We also examined some of the county records with respect to probate proceedings, in most cases had to do——

Q. No, just state in what county.

A. In Alameda County and in San Francisco County.

Q. Proceed.

A. We examined the records of the San Francisco police department of the civil and criminal and bankruptcy actions in the United States District Court in the clerk's office in San Francisco and also in the clerk's office in Carson City. I secured a copy of the sworn statement of Mrs. Remmer given in Stockton——

(Testimony of Ray Weaver.)

Mr. Avakian: Just a moment—I think we are getting into contents.

Mr. Campbell: He is not stating any contents.

The Court: You may proceed.

A. We examined the records in the Collector's office in Reno for the period, 1930 to 1943, inclusive.

Q. The Collector of Internal Revenue?

A. Yes, I examined the record of certain civil actions in the County of San Francisco. Made inquiry of the United States Treasury Department in Washington, and in the Chicago Regional Office relative to United States savings bonds, or any other United States bonds that might have been purchased. We made [2164] inquiry of credit agencies in Reno, Stockton and San Francisco.

Q. Does that cover that phase of the matter?

A. Yes. We also made inquiry at the Collector's office in San Francisco for any returns filed for the period 1930 to 1943, inclusive. I made unofficial inquiries—they were official inquiries, but hadn't occurred to me—

Q. Never mind. Now, will you relate of what banks or financial institutions you made inquiries, or caused to be made?

A. Made inquiries of all banks in San Francisco, of all of the branches of the Bank of America in Oakland and Berkeley.

Q. You say of all banks in San Francisco?

A. Yes, sir. The First National Bank of Nevada, Carson City Branch and the Lake Tahoe

(Testimony of Ray Weaver.)

Branch, the Farmers Bank of Carson Valley at Minden, the First National Bank of Nevada, both of the Reno branches, Security National Bank of Reno, Manufacturers Trust Company of New York City, First National Bank of Bellmore, Bellmore, New York; Stockton Savings & Loan Bank, Bank of America in Tracy, Mechanics Bank in El Cerrito, California. We also made some search of film records at the Bank of America's Transit Department in San Francisco, as well as looking at detailed records of certain of the banks that I have mentioned.

Q. You refer to the Transit Department of the Bank of America?

A. The Transit Department handles all of the items going in or out of San Francisco to any of the branches of the Bank of America. [2165]

Q. In other words, the Bank of America has its own clearing department as among its various offices, is that correct? A. Yes.

Q. And the Transit Department handles their business in the way of interchange of the credits or debits as between the various branches of the Bank of America, is that correct?

A. That's right.

Q. Does that cover the banks and financial institutions? A. Yes, it does.

Q. Now, in what city or cities did you make, or cause to be made, investigations relative to Mr. Remmer's connections there?

A. Investigations or inquiries were made in

(Testimony of Ray Weaver.)

New York and Honolulu and Fresno and New Orleans, in Portland, Las Vegas, Los Angeles, Sacramento, Santa Rosa, Reno, and the cities surrounding the Bay Area, such as Oakland and El Cerrito.

Q. And San Francisco as well?

A. Yes. That about covers the various places.

Q. Now, during the course of your investigation did you also interview, or cause to be interviewed, business associates of Mr. Remmer?

A. Yes. The persons interviewed—

Mr. Golden: That is the answer to the question, your Honor—the question has been answered.

The Court: Yes, the question has been answered.

Q. Will you state whether or not in that connection you [2166] interviewed all such former business associates as you were able to contact?

Mr. Avakian: Just a moment—that calls for his opinion and conclusion, your Honor.

The Court: Objection will be overruled.

A. Yes, all that we could contact were interviewed.

Q. And will you state whether or not inquiries were made on the subject of Mr. Remmer's living expenses? A. Yes.

Q. And will you state the nature, without stating the findings, of the investigation in that regard?

A. Well, in that respect we made inquiry of the credit associations in Reno, Stockton and San Francisco. We also made inquiry of various retail and wholesale establishments in Chicago, San Francisco, Del Mar, California; Inglewood, California;



(Testimony of Ray Weaver.)

Berkeley, Long Island, New York; San Bruno, California; Oakland, California; Arcadia, California; Carson City, Richmond, California; Lafayette, California; Oakland, California; Los Angeles, California; Beverley Hills, California; Stockton California, and Kansas City.

Q. Now, in connection with your investigation, Mr. Weaver, did you attempt to follow up every lead from whatever source having to do with Mr. Remmer's business affairs? A. Yes.

Mr. Avakian: May we have the question? [2167]

The Court: The answer may go out.

Mr. Avakian: That calls for conclusion and characterization of quality and work he did. It is not factual.

The Court: Overruled. Answer the question.

A. Yes, we attempted to follow every lead that we received from any source.

Q. Now, Mr. Weaver, during the course of your examination, did you find any evidence or indication that Mr. Remmer received any money or property by gift or inheritance?

Mr. Avakian: We object to that, your Honor, because it is obviously calling for results of his investigation, what he found or didn't find. That is not testimony, that is conclusion as to what his investigation was. It is not based on evidence in the record but on other things he said he did. Not a proper way to establish it.

Mr. Campbell: I would submit, your Honor—

The Court (Interceding): Objection overruled.

(Testimony of Ray Weaver.)

A. We found no evidence or even any indication of any gifts or inheritance.

Q. Now, during the course of your investigation—I will ask that you answer this question yes or no—during the course of your investigation, were you able to determine the living expenses of Mr. Remmer for the years, 1944 to 1946, inclusive?

A. No, we were not.

Q. Now, were you able, during the course of your investigation, [2168] to ascertain the contents of any of the safes or safety deposit boxes, concerning which evidence has been produced here, as of any date during the period January 1, 1944, to December 31, 1946?

A. No, sir, we never ascertained the contents of any safe.

Q. Or at any date during your investigation?

A. No, sir.

Mr. Avakian: Just a moment—you are going beyond the period 1944 to 1946.

Mr. Campbell: I asked any date.

Mr. Avakian: I object to the question so far as it goes outside the period——

The Court: The answer may stand.

Mr. Avakian: Was the answer given?

Mr. Campbell: The answer was no.

Q. Now, during the course of the investigation, did you or any of your agents who were working under your direction, talk to the defendant, Elmer Remmer?

(Testimony of Ray Weaver.)

Mr. Avakian: May that be answered yes or no, your Honor?

The Court: It may.

A. No, sir.

Q. Did you—and you may also answer this yes or no—did you make an effort or attempt to talk to Mr. Remmer concerning the matters of your investigation?

Mr. Avakian: Just a moment, your Honor, we object to that question as improper, in violation of the legal rights of [2169] the defendant and the asking of that question in the presence of the jury is prejudicial and misconduct on the part of the prosecution. If your Honor would care to hear argument on the matter, we would be glad to take it up.

The Court: The objection will be sustained.

Mr. Avakian: Will the jury be instructed to disregard that?

The Court: Oh, there is no need of that. I have told the jury about five or six times that the only thing that they are concerned with, and the only basis of their verdict, must be what they hear here legally admitted in evidence and documents admitted in evidence. I am sure this jury is not so apt to depart from that as believe—I am sure they won't.

Q. Mr. Weaver, during the course of your examination, did you have before you the returns filed by Mr. Remmer, which are here in evidence?

A. Yes, I did.

(Testimony of Ray Weaver.)

Q. And did you also have before you the returns which are here in evidence of the various enterprises in which he had, or purported to have, an interest?      A. Yes, I did.

Q. And did you have before you the books and records which have been produced here?

A. Yes. [2170]

Mr. Campbell: You may cross-examine.

Cross-Examination

By Mr. Avakian:

Q. Mr. Weaver, in your direct examination you stated that you had studied accounting at the University of Pittsburgh, is that correct?

A. That is correct.

Q. When did you receive the bachelor's degree there?      A. In 1928.

Q. And you obtained your master's degree in business administration at Northwestern University?      A. That is correct.

Q. What year did you obtain that degree?

A. In 1930.

Q. When was it that you did this work with the subsidiary of Paramount Pictures Corporation?

A. '29 and '30.

Q. Where was that?

A. That was in Chicago.

Q. Were you going to school at Northwestern at the same time?      A. Yes, I was in school.

Q. Subsequently you had about a year's prac-

(Testimony of Ray Weaver.)

tice in Emmaus, Pennsylvania? How do you pronounce that? A. Emmaus.

Q. Was that entirely your own practice or were you associated with others? [2171]

A. It was entirely my own.

Q. When was that year of practice in Emmaus?

A. It was in 1932 or 1933.

Q. Now, you also stated that you taught accounting subjects for about four years. During what four-year period did you do that teaching?

A. 1930-31 was one period.

Q. And where did you teach then?

A. Lafayette, Colorado.

Q. Was that full time teaching? A. Yes.

Q. What subjects did you teach?

A. Accounting, economics and sociology.

Q. Was that one school year, 1930-31?

A. That is right.

Q. Where did you teach next?

A. At Northwestern University.

Q. When was that?

A. That was the following year, 1931-32.

Q. The school year 1931-32? A. Yes.

Q. Was that likewise full time?

A. That was part time on a teaching fellowship.

Q. And your next school where you taught?

A. Was William Penn College. [2172]

Q. When was that? A. 1933-'34.

Q. And that, I believe, is located in Iowa?

A. That's right.

Q. Was that full time teaching? A. Yes.

(Testimony of Ray Weaver.)

Q. And likewise in accounting subjects?

A. Yes, that's right.

Q. And then you taught at Whitworth College in Spokane? A. That is right.

Q. What year was that? A. 1934-'35.

Q. Was that likewise full time? A. Yes.

Q. So that you taught in Lafayette 1930-31, Northwestern '31-'32, then you had this year in your own private accounting practice in Emmaus, Pennsylvania, is that right? A. Yes.

Q. And two more years teaching?

A. Yes.

Q. And that brings us to 1935 and I believe you said that is when you went with the Internal Revenue Bureau? A. That is right.

Q. During the course of your employment by the subsidiary of Paramount Pictures, what type of accounting were you doing? [2173]

A. General ledger bookkeeping, accounting, preparation of financial statements.

Q. Bookkeeping and preparing financial statements for that particular company?

A. That is right.

Q. What was the nature of your practice during the year that you practiced in Emmaus, Pennsylvania?

A. Auditing and preparation of tax returns.

Q. And Emmaus, I take it, is a fairly small town? A. Yes, about eight thousand.

Q. You represented mostly small business men in Emmaus?

(Testimony of Ray Weaver.)

A. That's right. There was one or two corporations there represented.

Q. And did you represent partnerships in the course of that practice?

A. I don't believe so.

Q. Did you prepare any partnership tax returns during that year of private practice?

A. No, sir.

Q. From 1935 until approximately 1940 you were in the office of the Internal Revenue agent?

A. Until 1941.

Q. And was that in San Francisco?

A. That's right.

Q. The entire period? [2174] A. Yes.

Q. What type of work were you doing for the Internal Revenue?

A. I was field agent until the last year I was there, when I was engaged in reviewing for several months before transfer.

Q. During the time you were field agent, you made audits of tax returns filed by various taxpayers and business organizations? A. Yes.

Q. And did that include audits of returns filed by partnerships? A. Yes.

Q. And you became familiar, then, with the manner of preparing partnership returns?

A. Well, more familiar than before.

Q. In other words, you had experience during that period with the problems involved in preparing partnership returns, is that correct?

A. That's right.

(Testimony of Ray Weaver.)

Q. Now, what happened to your accounting career in 1941? You went in the service then, is that right?

A. No, in 1941 I transferred to the Intelligence Division.

Q. And then were you in the Intelligence Unit until this date?

A. Except for the period of war time.

Q. When was that? A. 1943 to 1946.

Q. From 1941 to 1943 and from 1943 to 1946 until the present [2175] you were in the Intelligence Unit, or as it is now called, the Intelligence Division, is that right? A. That's right.

Q. When you were in the Internal Revenue Agent's office, your work there dealt primarily in auditing tax returns to determine the correctness of income tax as reported on returns you were auditing, is that right?

Mr. Campbell: I object to the question in that form.

The Court: Let me have the question.

(Question read.)

The Court: Objection overruled. Answer the question.

A. Yes, that was my primary duty.

Q. The Internal Revenue Agent's office is a branch of the Internal Revenue Bureau which is independent of the Intelligence Division, is that correct?

A. It is independent in the sense it is not under



(Testimony of Ray Weaver.)

their control. It is inter-independent in the sense that we work jointly in certain cases.

Q. You work jointly but you are really different units? A. That is correct.

Q. And the function of the Intelligence Division now is principally that of investigating cases in which there are alleged, or suspected to be, some fraud in connection with federal taxes, primarily income taxes, is that right?

A. Yes, that is right. [2176]

Q. So that when you transferred to the Intelligence Unit, you entered into that different phase of work dealing primarily with the question of investigating frauds, or suspected frauds, is that right? A. Yes, that's correct.

Q. Now, you have presented various exhibits here, which purport to set forth the net worth of certain businesses which you and your associates examined. Can you explain to us what the term "net worth" means in an accounting sense?

Mr. Campbell: Objected to as a fact not in evidence. There is a certain charge here which reflect what the books show the net worth to be, or what the books which are here in evidence reflect as to certain assets and liabilities.

Mr. Avakian: That is not true——

The Court: Let me have the question.

(Question read.)

The Court: Objection overruled. Answer the question.

(Testimony of Ray Weaver.)

A. In the manner in which the term "net worth" is used in a net worth case, it refers to the net cost of the assets which a taxpayer owns after deducting his outstanding obligations.

Q. Would it be correct to say that it is the difference between all the assets and all of the liabilities?

A. Well, it doesn't go quite far enough because it is specifically said the assets at cost.

Q. In other words then, it would be correct to say, for the [2177] purpose of determining income by the net worth method, the term net worth means the difference between all the assets valued at cost and all of the liabilities likewise valued at cost?

Mr. Campbell: Objected to—that is misleading—the cost of liabilities. I do not understand the liabilities are what you own.

The Court: Well, the witness may answer the question.

A. Well, the liabilities would be at cost value.

Q. And the assets valued at cost, is that right?

A. That is right.

Q. And valued at cost to whom? To the person or entity whose net worth you are determining?

A. That's right.

Q. In order then to determine the correct and accurate net worth of a particular taxpayer or entity that you are analyzing, would it be necessary to have before you all of the assets and all of the liabilities as of the particular date for which you were determining the net worth?

(Testimony of Ray Weaver.)

A. In order to determine the correct net worth as of that particular date, yes.

Q. So that if any particular asset or liability were omitted, then you would not have a correct and accurate net worth computation?

A. The net worth computation would not be correct, but the [2178] income computation may be.

Q. By that you mean that the income computation is based on increasing the net worth, is that right?

A. That's right.

Q. You are, I believe, a certified public accountant, is that right?

A. Yes.

Q. Can you tell us the significance of the word "certified" in that designation?

A. Well, it is merely you have passed an examination prescribed by some State statute.

Q. And in the accounting business it is customary, is it not, for a certified public accountant to make audits which he certifies to be correct in an accounting sense?

A. That is right.

Q. An accountant who is not a certified public accountant does not have the privilege of submitting a certified audit, is that correct?

A. Well, he may.

Q. Where the State statute calls for certain qualifications?

A. It depends on the State statute.

Mr. Campbell: Objected to as immaterial.

Q. You are certified in what State?

A. Iowa.

(Testimony of Ray Weaver.)

Q. Is that the only State you are [2179] certified?  
A. Yes.

Q. In connection with the computation of net income on net worth method, it is necessary, is it not, Mr. Weaver, to determine the net worth at the beginning of the particular period that is covered by your income computation?

A. Yes.

Q. And that is commonly referred to as the starting point, is it not?

A. I have heard it referred to as such by many attorneys here.

Q. Well, don't accountants refer to the beginning point as the starting point of the net worth computation?

A. From mechanics standpoint, actually each new year presents a new beginning point.

Q. I said for whatever period is involved in your income computation, the beginning is called the starting point, isn't that right, whether one year or three years, whatever it may be?

A. That's right.

Q. In computing the net worth, at the starting point it is necessary, in order to make an accurate computation of net worth increase, to determine the amount of cash, if any, which that particular taxpayer or entity possessed at the starting point, isn't that correct?

A. That is highly desirable, yes.

Q. Well, if there is cash in existence at that time, you can [2180] not make an accurate com-

(Testimony of Ray Weaver.)

putation of net worth at the starting point without knowing the amount of the cash, is that correct?

A. That's correct.

Q. And it is likewise true, is it not, Mr. Weaver, that in order to make an accurate computation of net income on the net worth method, it is essential to know the amount of cash, if any, at the end of the period for which you are making the computation?

A. Yes, unless the cash remains constant.

Q. In other words, you have to know what the cash picture is at the beginning and end in order to make an accurate computation, don't you?

A. Yes, we always try to determine that if we can get the information.

Q. I believe you stated that you, did you not, were unable to determine the amount of cash that was in the various safes and safe deposit boxes which have been mentioned in evidence here, at any time during the period covered by your investigation?

A. That is right because Mr. Remmer——

Mr. Avakian: Just a minute——

Mr. Campbell: I submit he has a right to finish his answer.

The Court: You may proceed.

Mr. Avakian: The question has been answered. I ask the rest go out. [2181]

The Court: He may proceed.

Mr. Golden: It is purely voluntarily and gratuitous.

(Testimony of Ray Weaver.)

The Court: He may proceed.

(Question and answer read.)

The Court: You may proceed.

A. —because Mr. Remmer refused to talk to us to give us any information whatever, including cash.

Q. Did he make that refusal to you?

A. Yes, he did.

Q. Where was that made?

A. In Mr. Thatcher's office in Reno.

Q. When? A. April 8, 1948.

Q. April 8, 1948, in Mr. Thatcher's office in Reno? A. Yes.

Q. And Mr. Thatcher is an attorney in Reno?

A. That is right.

Q. Do you know the name of his firm?

A. At that time it was known as Thatcher, Woodburn and Forman.

Q. And do you remember which Mr. Thatcher it was? A. John P. Thatcher.

Q. That is the younger one? A. Yes.

Q. Was that in his private office?

A. I believe so. [2182]

Q. Who was present?

A. Present at the time were Mr. Thatcher, Mr. Remmer, the young lady from the Collector's office, who was the stenographer, I can't recall her name at the moment, Mr. Harkness and Mr. Morgan and myself.

(Testimony of Ray Weaver.)

Q. And all these people you named were present in the same room? A. Yes.

Q. In Mr. Thatcher's private office?

A. Yes, sir.

Q. Just what was it that Mr. Remmer said to you at that time?

A. Mr. Thatcher stated that he had advised Mr. Remmer not to answer any questions or make any statement to us whatsoever and I asked Mr. Remmer if that was his own conclusion in the matter and he said yes.

Q. Did he say the statement was on the advice of the lawyer?

A. I don't recall as he stated that, but he apparently followed the lawyer's advice.

Q. Were these statements preceded by any other discussions between those of you who were present? Just answer yes or no. A. Yes.

Q. And isn't it a fact that prior to that statement being made Mr. Thatcher asked you if you would state what it was that you wanted to talk to Mr. Remmer about?

A. Yes. We told him we wanted to talk to him about his income [2183] tax affairs.

Q. Isn't it a fact that Mr. Thatcher asked you if you would state what particular problems you wanted to talk about?

A. He asked if we had any particular charges and we said we couldn't make any charges, we were only making an investigation.

Q. Isn't it a fact Mr. Thatcher asked you

(Testimony of Ray Weaver.)

whether or not you were planning to recommend criminal prosecution of Mr. Remmer?

A. I told him I couldn't answer that question before he was investigated.

Q. He asked you that and you gave him that answer? A. Yes.

Q. Isn't it a fact Mr. Thatcher told you unless you were willing to state what you had in mind by way of specific problems as to taxes, as to whether or not you would recommend criminal prosecution, he would not permit you to question Mr. Remmer?

A. Yes, and I told him I couldn't make any recommendations or reach any conclusions until the investigation was made.

Q. That was your reply?

A. Yes, I told him that questioning Mr. Remmer was part of the investigation and that until that was done I couldn't make any proper recommendations.

Q. And didn't Mr. Thatcher also ask you if you would not state what particular accounting problems you were concerned with in the forthcoming interview?

A. He didn't refer to accounting problems so much as to what [2184] specific charges I might have against Mr. Remmer.

Q. And did you, at that time, have in your mind particular problems that you wanted to ask Mr. Remmer?

Mr. Campbell: Objected to as incompetent.

The Court: Objection sustained.



(Testimony of Ray Weaver.)

Q. Did you tell Mr. Thatcher any particular problems that you planned to discuss with him and Mr. Remmer?

A. I believe I said that we wanted to determine what his living expenses were. I don't know if we went into any detailed discussion.

Q. Isn't it a fact that you declined Mr. Thatcher's request for a statement as to the particular thing that you wanted to question him about?

A. It would be impossible to list all of the items he might be questioned about because the questioning process itself raised other questions.

Q. But isn't it a fact that you declined to state to him the things that you already had in mind at the time of making the inquiry?

A. No. I declined to make any statement with respect to any charges because I am not in position to make any charges.

Q. What do you mean by charges?

A. Well, charges are made only as the result of indictment.

Q. I don't know what you mean by the word "charges."

A. Well, that is the word that Mr. Thatcher used. I presume [2185] he meant legal charges. We can not make any charges against any one.

Q. Is it customary, during the course of the investigations which you have made, to discuss with the taxpayer or his representatives the particular issues of the case as you see them and to state to them the things that you consider to be incorrect in

(Testimony of Ray Weaver.)

the treatment which the taxpayer or his representatives gave to those items, in the preparation of tax returns?

Mr. Campbell: Objected to, what is customary; we are concerned with what is done.

Mr. Avakian: Customary in his investigations, your Honor.

The Court: Objection sustained.

Q. In the course of this investigation, you obtained various records of these businesses from a number of representatives of the particular businesses that you were investigating, isn't that right?

A. Yes, that's right.

Q. You and the other people working under you? A. Yes.

Q. You obtained information from Mr. Kyne, did you not, you and your staff? A. Yes.

Q. And Mr. Maundrell?

A. That is right.

Q. And Mr. Slater? [2186] A. Yes.

Q. And Mr. Ayton? A. Yes.

Q. Any other representatives of these businesses from which you or your associates obtained records or information?

A. Yes, we interviewed quite a number of employees.

Q. Now, in the course of this investigation did you, or any other member of your staff, at any time state to any of these representatives, with whom you dealt, that there was some particular

(Testimony of Ray Weaver.)

item that you thought had not been treated correctly?

Mr. Campbell: Objected to as immaterial and incompetent, what might have been stated or not stated to some third party.

The Court: Let me have the question.

(Question read.)

The Court: Objection overruled. Answer the question. Do you understand the question? Read the question.

(Question read.)

A. I am sure we must have mentioned repeatedly the inadequacy of the records.

Q. Perhaps you didn't understand the question. Would you like to have it read again?

Mr. Campbell: I submit that is answered.

The Court: If the witness wants it read again, he may have it read. Do you want it read again?

A. No, I don't believe so. [2187]

Q. Do you understand the question? Did you or your staff state to any of these representatives, with whom you dealt, that there was any particular matter which you thought had been treated improperly in the preparation of tax returns?

Mr. Campbell: Objected to as asked and answered.

The Court: You may answer.

A. The matter of the adequacy of the records, or inadequacy rather, I am sure was repeatedly mentioned to the representatives. Normally we

(Testimony of Ray Weaver.)

wouldn't mention any item on Mr. Remmer's personal returns to a third party. It would be highly improper.

Q. Take the Menlo Club as an example. You knew, did you not, that one of the partners, Mr. Maundrell, was the person who kept the books of the Menlo Club? A. Yes.

Q. Did you at any time, you or any of your representatives, state to Mr. Maundrell that any particular item in the affairs of the Menlo Club had been treated improperly from a tax accounting point of view in the preparation of the Menlo Club return by Mr. Maundrell or Mr. Ayton?

Mr. Campbell: Objected to as immaterial what he told or failed to tell Mr. Maundrell.

The Court: I think it is. Objection sustained.

Q. Well, let us take the Day-Night Cigar Store. You knew, did you not, that Mr. Maundrell was bookkeeper for that concern during the time he was employed? [2188]

A. Mr. Slater was the bookkeeper for most of the period covered here.

Q. Mr. Slater first and later Mr. Maundrell, is that right? A. Yes, that is right.

Q. Did you discuss the affairs of the Day-Night Cigar Store with either of those men?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Q. Do you know who the bookkeeper was for 110 Eddy Street?

(Testimony of Ray Weaver.)

A. Mr. Slater during most of the period covered here and then I believe Mr. Maundrell.

Q. Did Mr. Slater and Mr. Maundrell sit down with you and your representatives and discuss matters of the 110 Eddy Club every time that you requested them?

A. I have no recollection of their refusing.

Q. They gave you every possible cooperation, did they not? A. Yes.

Q. And they turned over to you all the records they had, so far as you know?

A. So far as I know, they did.

Q. And they turned over promptly when requested? A. Yes.

Q. Was that also true of Mr. Kyne?

A. Yes sir.

Q. And was that also true of Mr. Ayton? [2189]

A. Yes it was.

Q. Was that also true of the other representatives of these concerns that you said that you talked to?

A. That is true. Of course, none of them had any knowledge of the cash on hand or Mr. Remmer's personal finances.

Q. By cash on hand you are referring to cash that might have been on box No. 48 in the safety deposit box? A. Yes, or in any of the safes.

Q. And you know, do you not, that Willie Kyne had access to box 48 in the safe deposit box of the Bank of America?

A. Yes, but he could give no information as to cash on hand at any particular date.

(Testimony of Ray Weaver.)

Q. The fact is he told you there was no record which would show that?

A. Yes, and he refused us access to the box also.

Q. When was that? Was that after 1946?

A. Yes.

Q. So that looking at the box after 1946 you wouldn't be able to determine how much was there during any of this indictment period?

A. No, unless the amount remained constant and some record was there.

Q. And you know, do you not, that Mr. Kyne made frequent entries into that box during the entire period covered by this indictment? [2190]

A. I don't know how frequent they were.

Q. You examined those records, did you not?

A. I don't recall whether any records of entries were examined or not.

Q. You don't know what records of entries of the bank were *you* examined by your staff?

A. I do not recall that.

The Court: We will take our recess now for 10 minutes.

(Jury and alternate jurors admonished and recess taken at 11:00 a.m.)

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further

Cross-Examination

By Mr. Avakian:

Q. Mr. Weaver, the date of this conference in Mr. Thatcher's office has slipped my mind. It was in 1948, I believe. Will you give us again the date?

A. April 8, 1948.

Q. And that conference had been arranged pursuant to prior communications between you and Mr. Thatcher?

A. I believe it was between myself and Mr. Kyne.

Q. And then pursuant to the communications between you and Mr. Kyne, you and your associates appeared in Mr. Thatcher's office, is that [2191] right?

A. Yes, that is right.

Q. Do you remember what time of the day this was?

A. I believe it was in the morning. I have a memorandum of the time somewhere in my papers.

Q. Would you get that?

Mr. Campbell: I suggest it is immaterial.

Mr. Avakian: If he can refresh his recollection, I think it is proper for him to refer to it.

(Testimony of Ray Weaver.)

The Court: Suppose we postpone that for the time being. He can get it during the recess, will that be satisfactory?

Mr. Avakian: Yes, surely, if it will take some time, we can defer it.

A. I believe it is upstairs.

Mr. Avakian: Very well.

Q. You say there was a stenographer, member of the Reno office of the Bureau of Internal Revenue there also?

A. Yes, that is right.

Q. Did she transcript the meeting?

A. No, Mr. Thatcher would not permit her to take notes.

Q. She took no notes?

A. No.

Q. You and your men also took notes?

A. I made a memorandum of the interview afterward.

Q. How long did this interview last? [2192]

A. I would say approximately 15 or 20 minutes.

Q. Do you remember in what particular building that took place? Let me ask—was it the building in which Mr. Thatcher had his offices?

A. Yes.

Q. And it was in one of the private offices in that suite of offices?

A. That is right.

Q. Was it Mr. Thatcher's office, do you know?

A. I believe it was.

Q. Was he the only member of the firm who was present there?

A. Yes.

Q. Mr. Woodburn was not present?

A. No sir.



(Testimony of Ray Weaver.)

Q. Was Mr. Remmer present in the room when you and your associates entered Mr. Thatcher's office? A. Yes.

Q. Was any one else beside himself and Mr. Thatcher present? A. Not that I recall.

Q. Will you state again who was with you beside the stenographer, what other agents?

A. Mr. Morgan, Mr. Harkness and myself.

Q. The three of you? A. Yes.

Q. And you entered the room together, I take it? [2193] A. Yes, that is right.

Q. And then you were all present during this entire conversation? A. Yes.

Q. Do you recall specifically that Mr. Remmer was there when you entered?

A. That is my present recollection, yes.

Q. Do you remember where he was sitting?

A. I believe he was sitting to the right of the room. I remember him distinctly because he was wearing Western boots.

Q. You are quite positive, are you, Mr. Weaver, that Mr. Remmer was there during that conversation that you had? A. I spoke to him.

Q. You are quite positive he was there?

A. Yes.

Q. You are sure you are not mistaken about that? A. Absolutely.

Q. Isn't it a fact that Mr. Thatcher met with you in the absence of Mr. Remmer and had some discussion with you about the case without Mr. Remmer being present in the same room?

(Testimony of Ray Weaver.)

Mr. Campbell: On this same occasion?

Q. On this occasion? A. Not that I recall.

Q. Isn't it a fact that Mr. Thatcher told you before he called Mr. Remmer into the room he wanted to get some idea of [2194] what the case was about? A. I don't recall that at all.

Q. You say that isn't a fact?

A. I don't recall that. I wouldn't say you were misstating facts.

Q. Isn't it a fact that Mr. Remmer was never in that conference room on that occasion?

Mr. Campbell: Objected to as argumentative, asked and answered.

The Court: Objection sustained.

Mr. Avakian: Your Honor, I can't ask if something isn't a fact?

The Court: You already asked and he said he was.

Mr. Avakian: Isn't it proper to refresh his recollection by asking if something else isn't true? That is proper cross-examination.

The Court: The ruling will stand.

Q. Were you introduced to Mr. Remmer at that time? A. Yes.

Q. Who introduced you?

A. Mr. Thatcher, as I recall.

Q. Well, are you sure of that now?

A. I don't know who else could.

Q. Are you guessing or do you have a definite recollection?

(Testimony of Ray Weaver.)

A. Well, he is the only one there that knew Mr. Remmer before. [2195]

Q. I am trying to find out whether you are guessing or specifically remember. Which is it?

Mr. Campbell: Oh, I object.

The Court: Objection sustained.

Q. Isn't it a fact that you never met Mr. Remmer prior to the start of this trial?

A. Prior to——

Q. The commencement of the trial of this case?

A. No, that is not a fact.

Q. That is not a fact?           A. That's right.

Q. Did you ever meet Mr. Remmer on any other occasion beside this conference in Mr. Thatcher's office?           A. I tried to without success.

Q. You never did?

A. No, I could never reach him.

Q. You never met him except that one occasion?

A. That is right. Letters to him were unanswered.

Mr. Golden: The witness doesn't have to volunteer. That is not responsive and I ask it go out.

The Court: That latter part may go out.

Mr. Avakian: May we ask your Honor to instruct the witness to answer questions and not volunteer?

The Court: No, I will not ask any such thing. We will proceed. We will take each situation as it appears. [2196]

Mr. Avakian: I think it is quite evident he volunteers——

(Testimony of Ray Weaver.)

The Court (Interceding): I don't make rulings—I don't know just how to express my thoughts—I don't make wholesale rulings. I make rulings as situations come on.

Q. Now, would you state the names of the revenue agents who worked with you in connection with the investigation of this case?

A. Excluding Mr. Ezralow, who was assigned to the case before it was received in our office, first there was Mr. Morgan and Mr. Peel.

Q. Pardon me—would you state the assignment of the particular businesses which each of these was assigned to investigate as you go along?

A. There was no particular assignment. Each one worked wherever the occasion demanded.

Q. Was that under your general supervision?

A. Yes.

Q. Would you go ahead and name the rest of the revenue agents?

A. After Mr. Peel went to Korea he was replaced by Mr. Harkness, who continued until the end of the investigation.

Q. Were any other revenue agents assigned to this investigation besides those you have named?

A. No, those were the only ones assigned to it.

Q. And then I believe you stated in direct examination that [2197] special agents worked with you—correct me if I am wrong—were Mr. Whitside, Mr. Miner and Mr. Hemphill?

A. Yes, that is correct.

Q. Were they assigned to this case with you?

(Testimony of Ray Weaver.)

A. Mr. Whitside was assigned. The others were assigned for particular parts of the case.

Q. Were any other special agents assigned to work with you in connection with any phase of the investigation?

A. That is rather a difficult question to answer because we had collateral investigations in other parts of the country, to which other special agents were assigned, and—

Q. By that, you mean, if you had an inquiry to make in New York, you would request that New York office to assign an agent to develop some information for you?

A. That is right and occasionally we might have minor inquiries to make in the Bay Area and an agent would be assigned for temporary duty.

Q. Aside from that particular type of thing, I take it then there were no other special agents on the case?      A. That's right.

Q. Now, you said that the revenue agents and these special agents, whom you have named, worked with you in this investigation under your general supervision. Is it true, Mr. Weaver, that revenue agents concern themselves primarily with the question of the amount of the income and tax liability? [2198]

Mr. Campbell: Objected to as immaterial, what the general practice is.

The Court: Are you talking about this particular investigation?

(Testimony of Ray Weaver.)

Q. Yes, in this particular investigation, was under his supervision.

The Court: Very well, objection overruled.

A. Yes, that was the primary concern; not the exclusive concern.

Q. I understand that. And the primary concern of the special agents of the Intelligence Division who worked on this case was the matter of determining whether or not there was any intentional fraud, in the event of any tax deficiency that might be found to be due, is that correct?

A. Yes, that is right.

Q. And that is also the general practice in conducting such investigations, is it not? A. Yes.

Q. And did the revenue agents who worked on this case write up reports of the results of their investigation? A. Yes, they did.

Q. Do you know how the revenue agents made that report? Was it a report signed by all, or was it a report they made separately, separate reports?

A. I believe Mr. Morgan and Mr. Harkness combined in working [2199] on all their reports.

Q. They made a joint report then?

A. Yes.

Q. And that report was made to their superiors in the Internal Revenue Agent's office?

A. Yes, that is right.

Q. And copy was furnished to you?

A. Yes.

Q. And that likewise is the regular custom, is it not? A. Yes, that is right.

(Testimony of Ray Weaver.)

Q. Do you know the approximate date on which Mr. Morgan and Mr. Harkness submitted their report?

Mr. Campbell: Which report are you referring to?

Mr. Avakian: The report that he says they wrote together.

A. I might have a notation of it here.

Q. Are you referring to a document marked for identification?

A. No, this is another memorandum that I have prepared. Their reports were received in our office on August 29, 1949.

Q. You use that document in your hand to refresh your recollection on that? A. Yes.

Q. May I see it please? A. Surely.

Mr. Campbell: May it be marked for identification government's next number in order for identification? [2200]

Clerk: 179 for identification.

Q. Now, you stated, Mr. Weaver, that the revenue agents' report was received in your office on August 29, 1949. Can you tell me the date on which the revenue agents actually made their report?

Mr. Campbell: Objected to as immaterial, if the Court please.

Mr. Avakian: Your Honor, there has been extensive questioning on direct examination as to the scope of this investigation.

The Court: Oh, he may answer the question if he can.

(Testimony of Ray Weaver.)

A. I presume, due to the fact——

Q. Can you, by referring to prosecution's exhibit 179 for identification, refresh your recollection on that, so you can give it accurate?

A. Yes. The date of the confidential report is April 1, 1949, and of the technical report March 2, 1949. That would be the date the transcript would be submitted for review and typing.

Q. Now, then at the conclusion of your investigation did you likewise submit a report.

A. Yes.

Mr. Campbell: Objected to as immaterial and not within the issues, so incompetent.

The Court: Objection overruled. Answer the question. A. Yes, I did.

Q. And can you refresh your recollection from prosecution's [2201] Exhibit 179 for identification as to the date on which you made your report?

A. Yes, November 10, 1949.

Q. And at that time, or shortly thereafter, the file in the matter was referred to another office, was it not? A. Yes.

Q. And that was the office of Mr. Campbell?

A. That's right.

Q. On what date, if you can give the date to us?

Mr. Campbell: I object to this line of questioning as being immaterial.

The Court: I don't see where it is material. Objection sustained.

Mr. Avakian: Your Honor, we would like to



(Testimony of Ray Weaver.)

probe further into the scope and what is involved in this examination.

The Court: I can't see where that was covered by direct. The ruling will stand.

Mr. Avakian: May I refer on that—

The Court: (Interceding): The ruling will stand.

Mr. Avakian: Your Honor permitted the prosecution to go at great length into this.

The Court: I said the ruling will stand.

Mr. Avakian: And I won't be permitted to express myself?

The Court: I told you three times no.

Q. After the file was submitted to Mr. Campbell's office, did [2202] you make any further investigation?

Mr. Campbell: Objected to as immaterial.

The Court: Objection overruled.

A. Yes, I did.

Q. And your further investigation commenced approximately when and continued until approximately when?

A. It commenced probably as soon as the first report was submitted and continued until this date.

Q. When you say as soon as the first report was submitted, you mean the report was submitted to Mr. Campbell? A. Yes.

Q. And shortly thereafter you commenced additional investigations?

A. Yes, and continued until the present time.

Q. And actively so?

(Testimony of Ray Weaver.)

A. Well, not exclusively.

Q. I mean it isn't just a formal matter of investigation pending but you and your associates were actively engaged in working on the case between that time and the present time?

A. That's right. Just the other day we got information——

Mr. Campbell (Interrupting): Never mind. I think you are going into matters not proper. Of course, if counsel wants that, you can answer.

Mr. Golden: I object to that statement. Even Mr. Campbell recognizes——

The Court: I don't know any necessity for the statement. [2203]

Mr. Golden: I object to Mr. Campbell saying, "of course if counsel wants it," words to that effect.

The Court: The jury will not regard these exchanges. I think I have told the jury many times and I think they are only interested in the evidence that goes in here and is submitted.

Q. You listed, Mr. Weaver, a number of particular enterprises and transactions which you and your staff investigated in connection with this case, and in connection with that I believe you referred to refresh your recollection to a 9-page memorandum which has been marked for identification as prosecution's Exhibit 178. So far as you know, have you stated all of the transactions which you and your staff investigated in connection with this case?

A. No, there are probably many others which have not been noted in the files. In other words,

(Testimony of Ray Weaver.)

we make any inquiries and due to the pressure of other work, we make no notations in the file.

Q. But insofar as matters that you considered material where the case was concerned, have you, to the best of your recollection, listed all the transactions and matters which your staff investigated?

Mr. Campbell: Objected to as referring to something not in evidence. If it is offered in evidence, it is a different situation. [2204]

(Question read.)

Mr. Avakian: I will withdraw that question.

Q. Insofar as the various matters and transactions, concerning which testimony has been presented in this case are concerned, did you list, to the best of your recollection, the transactions and matters which you investigated?

Mr. Campbell: Objected to as referring to a list which is not in evidence. Further, calling for his conclusion as to what is or is not material.

The Court: It seems to me that this question has to do with the make-up, say, of this Exhibit 178.

Mr. Avakian: No, I am not referring to that, your Honor, now.

The Court: Let us have the question. Read it.

Mr. Avakian: Let me withdraw it and state it another way.

Q. I didn't hear you make any statement—and if I am incorrect, correct me—to the effect that you had made any investigation of a loan transaction

(Testimony of Ray Weaver.)

between Mr. Remmer and Mr. Jeffers. Did you make an investigation of that matter?

A. Yes, I did.

Q. And you recall the testimony of Mr. Maundrell in this case to the effect that he prepared a fifty thousand dollar note from Mr. Remmer to Mr. Jeffers on September 27, 1946?

A. I do not remember the date. I remember he said he prepared such a note, that he didn't know whether or not it had been [2205] repaid.

Q. While we are getting the note so you may examine the note, I will ask you this question—do you recall whether on direct examination you stated whether or not you had investigated that?

Mr. Campbell: That is objected to as—

The Court (Interceding): Objection sustained.

Q. I will hand you defendant's Exhibit A-1, a promissory note dated September 27, 1946, from Elmer L. Remmer to Robert L. Jeffers, in amount of fifty thousand dollars. You saw that note during the course of this trial, did you not? A. Yes.

Q. Do you recall Mr. Maundrell's testimony regarding it?

Mr. Campbell: Objected to as incompetent whether or not he recalls Mr. Maundrell's testimony.

The Court: He has already stated he does, I think.

A. I recall the testimony where he said he prepared this note and didn't know whether or not it had been repaid.

(Testimony of Ray Weaver.)

Q. In making computation of income for the year 1946, income of Mr. and Mrs. Remmer, on the net worth method, is it not true, Mr. Weaver, that it would be material to know whether or not that note had been repaid by the end of 1946?

Mr. Campbell: Objected to as not within the scope of direct examination, that he made any computation of income on that basis or any other basis. [2206]

Mr. Avakian: This witness has been offered as an expert.

The Court: Objection will be sustained.

Mr. Avakian: Your Honor, I would like to answer the argument.

The Court: Well, I have ruled.

Mr. Avakian: Very well.

Q. Did you, or any member of your staff, make any investigation of that matter prior to the commencement of the trial of this action?

Mr. Campbell: Object to the question as incomprehensible. I don't know to what counsel refers.

The Court: Would you state please to just what you refer?

Mr. Avakian: This transaction between Mr. Jeffers and Mr. Remmer, as evidenced by the note which is in evidence as defendant's A-1 and which the witness holds in his hand.

A. Before the trial if we had any evidence of this fifty thousand dollars——

Mr. Campbell: Just a moment——

(Testimony of Ray Weaver.)

The Court: The question can be answered yes or no.

Q. Did you make investigation of that matter prior to the commencement of the trial of this case?

A. Well, the investigation led into this matter.

Q. Well, was this matter covered by your investigation prior to the commencement of the trial of this action? A. Yes. [2207]

Q. Can you tell me approximately when?

A. If you will give me the letters from Mr. Semenza introduced here yesterday, I can tell you.

Q. I hand your prosecution's Exhibit 173. Will that refresh your recollection?

A. Yes, it was about November 11, 1949.

Q. And then did your investigations on that particular matter continue over a period of time?

A. Yes, it wasn't continuous.

Q. But over a period of time at various intervals you and your staff made investigation regarding that transaction? A. Yes.

Q. And until what time did that continue?

Mr. Campbell: Objected to as immaterial and incompetent, if the Court please.

The Court: You may answer the question.

A. Well, up to a week or two ago.

Q. In that connection, that is, in connection with that investigation, did you examine the records of the Day and Night office of the Bank of America in San Francisco, with respect to a bank account of Robert Jeffers? A. Yes, I did.

Q. And did you examine particularly the ledger

(Testimony of Ray Weaver.)

card of his account with respect to the month of September, 1946?

Mr. Campbell: Is the matter in evidence to which [2208] reference is made?

Mr. Avakian: I am asking if he examined the card for that month.

Mr. Campbell: Then I object on the ground not calling for the best evidence. The record of the account is the best evidence.

The Court: You may answer the question.

A. Yes, I did.

Mr. Avakian: I will ask that this document be marked for identification as defendant's Exhibit next in order.

Clerk: C-1.

Q. I will hand you document marked for identification as defendant's C-1, and ask you whether that is a photostatic copy of the document which you examined?

Mr. Campbell: Objected to as no proper foundation laid, calling for his conclusion and not the best evidence.

The Court: May I have the question?

(Question read.)

Mr. Campbell: I submit the original document is the best evidence. He asked if he examined from any record and that is obviously available.

Mr. Golden: Of course, there is no question that the original ledger sheet is better evidence than photostat of it, but all along here, your Honor, we

(Testimony of Ray Weaver.)

have been stipulating to the use of photostats and unless counsel has some—[2209]

The Court: Objection overruled. He may answer the question.

A. This doesn't seem to have all the figures on it as the one I looked at. Whether this is just a copy of a portion or not, I can't say.

Mr. Campbell: That is the basis of my objection, if the Court please, to the use of that document.

Q. Do you have in your possession here in Carson City a copy of the bank statement which you examined?

Mr. Campbell: Objected to as incompetent.

The Court: Objection overruled.

A. I believe we have the pencilled transcript of a portion of the account.

Q. And could you, by referring to that during the recess, refresh your recollection as to whether or not the photostat before you is a copy of the original document?

Mr. Campbell: I submit this is improper cross-examination, to refresh as to secondary evidence from other secondary evidence.

Mr. Avakian: Of course we can bring the bank people up if necessary, if there is any question—

The Court: You are asking him to do something during recess?

Mr. Avakian: Yes.

The Court: Very well; so there is nothing really before [2210] the Court.

Mr. Avakian: Will you do that during the re-



(Testimony of Ray Weaver.)

cess, and may the document be released to the witness during the recess for that purpose?

The Court: It may be released to the witness. We will take our recess.

(Jury and alternate jurors admonished and noon recess taken at 11:45 a.m.)

January 29, 1952, 1:30 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. WEAVER**

resumes the witness stand on further

**Cross-Examination**

**By Mr. Avakian:**

Mr. Campbell: If the Court please, while we are waiting to get started, I would like to inquire—counsel previously stated that they desired to recall Mr. Schriber for further cross-examination and I understand that this is their present intention. I wonder if that could be arranged so he could be called following this witness?

Mr. Golden: We sent word and as a matter of fact I thought he would be here today and I can't control him any more than you can, but he should be here tomorrow.

Q. Mr. Weaver, did you, during the noon recess, examine the files with respect to the photostatic

(Testimony of Ray Weaver.)

copy of the bank statement [2211] that you have in your possession?      A. Yes, I did.

Q. And have you been able to determine whether or not that is a correct copy of the document which you examined?

A. Yes, it is a correct copy of this particular portion. It does not cover all of the elements involved in this particular transaction.

Q. Is it a correct copy of the ledger card for that month?      A. It only covers two days.

Q. Did the document which you saw contain any other entries on that same document?

A. Not on those two days.

Mr. Campbell: May I ask a question on voir dire, if the Court please?

The Court: Yes.

Q. (By Mr. Campbell): Mr. Weaver, did you find in your working papers a complete transcript of that bank account?      A. Yes, I did.

Q. And calling your attention to the fact that the document which is marked defendant's C-1 for identification refers to a transaction only on the date of September 27, 1946, does the transcription of the bank account which you found contain record of other transactions in September of 1946?

A. Yes.

Mr. Campbell: Now, I will ask to have marked for [2212] identification transcript which you have produced—and, incidentally, does this purport to be a complete transcript of that account from on or about November 25, 1941 to December 17, 1947?

(Testimony of Ray Weaver.)

A. Yes, it does.

Mr. Campbell: I ask to have this marked for identification.

Clerk: 180.

Mr. Campbell: It may be if counsel had the complete—of course, the photostat of that bank account, my objection is not to the use of the photostat so much as to the completeness of the record even for that month, which merely purports to set forth one or two transactions on the same day.

Mr. Avakian: I might say, your Honor, that the bank has mailed to us, at our request, photostats of Mr. Jeffers' account for a period of several years and the only reason I limited it to the one I produced, to Defendant's C-1, was that the particular ledger card has the transaction that we considered material. We have no objection at all if counsel feels that there are other ledger cards from this account that are material, to allowing them to put in evidence from our supply the bank has given us whatever additional ledger cards they want. I have no objection to that at all, if that is what Mr. Campbell has in mind.

Mr. Campbell: I don't necessarily have anything in mind at this time. [2213]

The Court: There isn't really anything before the Court.

Mr. Avakian: This was precipitated by Mr. Campbell's objection to the use of the photostat and there was some indication from Mr. Campbell that he was not satisfied that this was a full and correct

(Testimony of Ray Weaver.)

copy and that is why Mr. Weaver was checking his files to see whether there was any inaccuracy that we presented. I don't know what else Mr. Campbell has in mind. If there is any particular thing we can meet—so far as we know, the only thing material in this account in respect to the note from Mr. Remmer to Mr. Jeffers is the record showing withdrawal from Mr. Jeffer's bank account that same day. That was the purpose of our beginning to lay the foundation for this particular document, to show that on the same day of the note, some transaction occurred in Mr. Jeffer's bank account that would have bearing on it.

Q. (By Mr. Avakian): Let me ask you this, Mr. Weaver, with respect to the entries that are shown on this photostat that has been marked defendant's C-1, are you satisfied, from the examination of your own files, that those particular entries are the entries shown on the original card when you examined them? A. Yes.

Mr. Campbell: I will stipulate those entries are shown on the original record of the bank.

Mr. Avakian: Then we will offer defendant's C-1 in evidence. [2214]

Mr. Campbell: To which I object to the materiality at this time.

Mr. Avakian: I will be glad to go into the materiality, if your Honor wants to hear.

Mr. Campbell: No foundation laid as to materiality.

(Testimony of Ray Weaver.)

The Court: Objection overruled. It may be admitted in evidence.

Mr. Avakian: I would like to read to the jury from defendant's C-1, which is a photostat of ledger sheet account of Robert Jeffers, 672 Eleventh Avenue, San Francisco, California, in Day and Night office, Bank of America, San Francisco, California. The ledger card shows, under date of September 26, 1946, a balance of \$32,955.58. On September 27, 1946, there is shown a deposit of \$20,000 and on the same date, September 27, 1946, there is shown a withdrawal in amount of \$50,000, with a resulting balance of \$2,955.58.

Q. Now, did you also obtain, during the noon recess, Mr. Weaver, the memorandum of your conference in Mr. Thatcher's office?

A. No, I wasn't able to locate that. I did refresh my memory by discussion with the other agents present at the time.

Q. You were not able to find the memorandum?

A. No, sir.

Q. Do you wish to change your testimony in any respect? A. I don't believe so.

Q. Do you know where that memorandum is? [2215] A. No, I don't.

Q. Did you make a memorandum at the time?

A. As I recall now, I did, yes.

Q. Do you have any index of your files of any kind that indicates what you did with the memorandum?

Mr. Campbell: Objected to as incompetent.

(Testimony of Ray Weaver.)

The Court: You may answer the question.

A. Yes, but during the course of the trial there was so much information it was rather difficult to keep track of by indexes.

Q. So you couldn't find it?

A. That is right.

Q. Are you satisfied the search you have made is sufficient, or are there other places where you could look?

A. I am satisfied of my recollection what took place is refreshed.

Q. That wasn't my question. Are you satisfied you have looked for that memorandum as exhaustively as you can, or do you feel it might be helpful for you to make further search for it?

A. That I could not say without searching more.

Q. Then will you search further over night, Mr. Weaver, and give us a report tomorrow if you are able to find that memorandum?

A. Yes, sure. [2216]

Q. Mr. Weaver, in preparing the balance sheet for a business organization, that is a partnership, in order to arrive at the net worth of the partnership, you subtract the total liabilities from the total assets, is that correct?

Mr. Campbell: Objected to as incompetent and not within the scope of direct examination.

The Court: Objection overruled. Answer the question.

(Question read.)

(Testimony of Ray Weaver.)

A. Yes. You refer in each case to the assets for the partnership and the liabilities of the partnership.

Q. And that computation, however, should be confined to the assets of the partnership and liabilities of the partnership, is that right?

A. That's right.

Q. And when you are computing increase in net worth of a partnership, as a part of the process of computing the increase in net worth of any of the partners of the partnership, should the assets of the partnership be listed at their cost to the partnership?

A. It all depends. If there is a predecessor partnership, in which the same partner was a member at the time of acquisition, that particular cost should be used. If you are a successor of partnership—

Q. Let us assume a newly formed partnership.

A. Yes, then it would be taken at the cost to the partnership. [2217]

Q. And the net worth of the partnership represents the total of the equities of the various partners, does it not?

A. Yes, if by equities you mean their interest in the net assets.

Q. In other words, the dollar value of their equity or investment in the business, is that correct?

A. No, it is not correct, because in a net worth computation there is used to determine the income the assets and value of cost, whereas actually the

(Testimony of Ray Weaver.)

real value of the assets may be considerably more, particularly during a period of inflation.

Q. Let me qualify my question then. The net worth of a partnership, computed on the basis of assets at cost to the partnership, minus liabilities, represents the investment of the partners' value in dollars cost, isn't that correct?

Mr. Campbell: I am going to object to that question as non-comprehensive, in that it does not even purport to include all the factors which must be taken into consideration in such a matter. May the question be read?

(Question read.)

Mr. Campbell: In other words, investment could mean a variety of things. It could mean initial investment or could include accumulated profits.

The Court: Can you make that a little more specific.

Mr. Avakian: I want the question understood exactly the way Mr. Campbell understands it. It represents the amount of money that the partners have invested in that business, either [2218] through initial investment or through accumulation of profits which have not been withdrawn.

The Court: You may answer the question.

(Question read.)

A. Yes, that is correct.

Q. And if the net worth statement of a partnership is properly and accurately prepared, the



(Testimony of Ray Weaver.)

amount of the net worth, computing assets at cost, should be equal to the total of the capital accounts of the partners, should it not?

Mr. Campbell: I object to this line of questioning. While interesting in an academic sense, I think it has no competency or relevancy here, where we are seeking to determine specific matters with regard to specific taxpayers and specific partnerships.

Mr. Avakian: Does your Honor care to hear—

The Court (Interceding): The latter part of the question as to capital accounts—

Mr. Avakian: Perhaps I could get that explained first and then go back. May I withdraw the question for the moment.

Q. In partnership accounting, Mr. Weaver, the capital account of a partner is the accounting medium for recording his interest in dollars in that business, is that correct?

Mr. Campbell: Objected to as immaterial to our issues here.

The Court: He may answer the question. [2219]

A. That is correct as far as it goes.

Q. Would you like to add something to it?

A. It doesn't exactly mean that the converse would represent the actual cost of all of the assets of the partnership. One partner might come in being more than the actual original cost of the assets for his share, in which case there would be an element of good will or bonus of a previous partner.

Q. And that would be reflected somewhere in the accounts, would it not?

(Testimony of Ray Weaver.)

A. Well, it might be reflected in the partnership accounts or partner's accounts of the partners receiving the bonus. It wouldn't necessarily be reflected in the partnership accounts.

Q. With respect to a newly formed partnership, the capital account set up for each partner would be the means of recording the credit that had been given to him for what he had put in the business, if anything, am I correct so far?

Mr. Campbell: Objected to as immaterial to the issues in this case.

The Court: Let him finish the question.

Mr. Avakian: I am asking it piecemeal. The question was completed for this purpose.

(Question read.)

Mr. Campbell: My point is this—it is true this witness is qualified as a certified public accountant. We are here—— [2220]

The Court (Interceding): That is one of the thoughts I had in mind in deciding these questions on your objections. These questions may or may not go to test the knowledge, experience, or efficiency of this witness as an accountant.

Mr. Campbell: Are they directed to his qualifications?

The Court: I don't know. They might all enter into the picture. That is the idea I have in mind.

Mr. Campbell: If they are directed supposedly to the evidence in this case, I submit they are irrelevant and immaterial.

(Testimony of Ray Weaver.)

The Court: They probably could apply to both. Objection will be overruled.

(Question read.)

A. Well, since you added "if anything" was put in the business, sometimes a credit is given to a man merely for his entrance into the partnership, not for any actual investment. Since you say for his actual investment, if anything, yes, I would.

Q. Then the capital account of the partner is also used, is it not, to show that the partner's share of the income for each as to each year includes the income or loss? A. Yes, that is right.

Q. And that capital account is also used, is it not, to reflect the amount of any drawings which the partner might make [2221] from time to time of that account?

Mr. Campbell: I understand questions of a hypothetical and general nature have no application of what the books and records show here, if I might make that inquiry to the Court?

The Court: Well, I don't know that we have to stop at this time to determine that question. Objection will be overruled.

Mr. Campbell: I renew my objection as to being immaterial and irrelevant.

The Court: Objection overruled.

(Question read.)

A. Yes, that is right.

Q. And then it would be proper accounting pro-

(Testimony of Ray Weaver.)

cedure, would it not, to show the balance in that account from time to time as either credits or debits were made to him?      A. Yes.

Q. In preparing the income tax return of the partnership, is it proper accounting to show on the return each partner's share of the profit of the partnership for that year?

A. Yes, if it is a partnership.

Q. I am asking you assuming a newly organized partnership in these questions. Now then, Mr. Weaver, in the case of a partnership which has a net income, is it proper accounting, in the preparation of the individual return of each particular partner, to show, as his taxable income from that partnership, his [2222] share of the profits for that year, or is it proper to show the amount that he actually withdrew from the business that year?

A. No, if it is a true partnership, it should show his actual share of the profits.

Q. And the amount of his drawings would be immaterial for that purpose?

A. That is right.

Q. It wouldn't matter whether he drew less or he drew more than his share?      A. That's right.

Q. Now, Mr. Weaver, so that we can get a clear picture of how these accounting procedures should be applied, I am going to ask you to answer the following series of questions with respect to this statement of facts that I am now about to make to you.

Let us suppose that on May 1, 1945, a man by the

(Testimony of Ray Weaver.)

name of Remmer, whom we shall call Mr. R, a man by the name of Kyne, whom we shall call Mr. K, a man by the name of Ditto, whom we shall call Mr. D, a man by the name of Nelson, whom we shall call Mr. N, a man by the name of Maundrell, whom we shall call Mr. M, a man by the name of Fricker, whom we shall call Mr. F, and a man by the name of Turner, whom we shall call Mr. T, enter into a partnership for the purpose of operating a business, which had just been purchased by Mr. R. Let us assume further [2223] that Mr. R purchased that business at a price of 175 thousand dollars, which he paid partly in cash and partly in notes, payable at various times in the future. Let us assume further that Mr. R agrees with these other partners to put that business into the partnership. Let us assume further that the other partners do not put up any money or property of their own as a contribution to the partnership. Let us assume further that under the agreement Mr. R is to have a 40 per cent interest in the profits, Mr. K is to have a 15 per cent interest in the profits, Mr. D is to have a 10 per cent interest in the profits, Mr. N is to have a 10 per cent interest in the profits, Mr. M is also to have a 10 per cent interest in the profits, Mr. F is to have a 10 per cent interests in the profits, and Mr. T is to have a 5 per cent interest in the profits. Let us assume further that under the agreement between these various partners, Mr. R is to withdraw 175 thousand dollars before the other partners withdraw any money from the business, and let

(Testimony of Ray Weaver.)

us assume further that the agreement between these partners is that as to the other six partners, that is, other than Mr. R, each partner agrees to let his share of the profits accumulate in the business, for the purpose of paying for his respective percentage interest in the assets of the business. Now, I realize that is a very lengthy statement and with the Court's permission, I am going to put some notations on the blackboard. [2224]

Mr. Campbell: May we have the question before that is done?

The Court: Finish the question.

Mr. Avakian: I thought before I put the specific question——

The Court (Interceding): I think we had better dispose of the question.

Q. The first question, Mr. Weaver, is this—in setting up the capital accounts of the partners of that business, would it be proper accounting procedure to enter in Mr. R's capital account a credit in the amount of 175 thousand dollars, representing the cost of the business which he was contributing to the partnership?

Mr. Campbell: Objected to as assuming facts not in evidence, not containing, in other words, a proper statement of the evidence as it is presently before the Court; third, it is not proper cross-examination and not within the scope of the direct examination.

The Court: Objection sustained on the latter ground.

Mr. Avakian: Not within the scope of direct?

(Testimony of Ray Weaver.)

The Court: Yes, sir.

Mr. Avakian: May I call to your Honor's attention that Mr. Weaver——

Mr. Campbell: May I suggest the jury be excused?

The Court: Yes, we will excuse the jury. [2225]

(Jury and alternate jurors admonished and excused at 2:00 p.m.)

(In the absence of the jury. NB 336, pp. 48-63.)

2:50 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. WEAVER**

resumes the witness stand on further

Cross-Examination

By Mr. Avakian:

Mr. Campbell: I think the record, at the time the jury left, showed a question having been asked and objection interposed in behalf of the government. May the ruling be made in the presence of the jury?

The Court: Yes, objection sustained.

Q. Mr. Weaver, I will call your attention to prosecution's Exhibit 165, and perhaps it will be

(Testimony of Ray Weaver.)

well if I hand that to the witness, if I may, your Honor?

The Court: Yes, sir.

Q. That is the exhibit which you prepared and submitted here as statement of assets, liabilities, net worth and capital accounts of partners in the Menlo Club, is that correct?

Mr. Campbell: Objected to as assuming a fact not in evidence. That was not the evidence.

The Court: Isn't there a title, heading on that?

Mr. Avakian: I was reading the various captions but it [2226] is entitled "Menlo Club, Assets and Liabilities December 31, 1945, to December 31, 1946." You prepared that yourself, did you not?

A. Yes. The capital accounts, however, are per books.

Q. Now, in preparing that exhibit you used various testimony and exhibits which were presented in this case, did you not? A. Yes.

Q. And then in addition, as to certain items, did you exercise your judgment as an accountant to make certain adjustments? I will go into it later if you answer this yes. Answer that yes or no.

A. I couldn't very well answer that without going over each item individually.

Q. Refresh your recollection by looking at the exhibit and then answer the question.

The Court: Let me have the question again.

(Question read.)

A. I believe all the items are based on the ex-



(Testimony of Ray Weaver.)

hibits and testimony, with the exception of the computation of depreciation.

Q. You also capitalized certain items that were deducted in the returns as current expenditures?

A. Deducted in the returns or the books?

Q. In the books.

A. May I see where they were deducted?

Q. You are unable to answer my question, is that what you [2227] wish to say?

Mr. Campbell: If the Court please——

The Court: Objection sustained.

A. I do not know what improvements you are referring to.

Q. Were there any improvements which you found in evidence in this case which you decided in preparing Exhibit 165 to capitalize as capital items?

A. Only those which were characterized as capital items by Mr. Maundrell's testimony.

Q. I do not recall that Mr. Maundrell characterized anything as a capital item or not. Do you recall that he did? Is that what you base your exhibit on? A. That is correct.

Q. Well, are there figures in Exhibit 165 which represent your own computation based on capitalizing certain items which were not capitalized in the books?

A. The books had no ledger accounts whatsoever for any capital items or for any——

The Court: Will you pardon a suggestion. Suppose you take Exhibit 165 and point out to him

(Testimony of Ray Weaver.)

those matters which you think were to be exercise of his judgment as an accountant.

Mr. Avakian: I intend to do that, but I wanted preliminarily to get a statement that he had exercised judgment I will defer to your Honor's suggestion. [2228]

The Court: No, it is just a suggestion.

Mr. Avakian: I wanted to get preliminarily in response to my question as to whether or not he had in certain instances exercised his judgment.

Mr. Campbell: May the witness finish the answer?

(Question and answer read.)

A. They contain only capital accounts for some of the partners and therefore I can't quite understand your statement of items that were not capitalized in the books.

Q. You do not understand my question?

A. Because actually nothing was capitalized in the books.

Q. But you did, in preparing your books, capitalize certain items, did you not? A. Yes.

Q. And that was based on your analysis and judgment as an accountant, isn't that correct?

A. Well, I based it on, I believe, Mr. Maundrell's testimony as to what the items represented.

Q. But Mr. Maundrell simply stated what the items were. He did not state they were capitalized or current?

A. Perhaps my idea what it represents and

(Testimony of Ray Weaver.)

yours is different. If some one tells something is capitalized, I would exercise my judgment.

Q. What I am getting at is this—there are, are there not, on your Exhibit 165, certain figures which represent your own [2229] computations as to what should be shown as correct asset figure for those particular items?

A. Well, I still think I based on Mr. Maundrell's testimony as to what they represent.

Q. Do you agree with that?

Mr. Campbell: I object to that.

Q. What is your judgment on it?

The Court: Objection sustained.

Mr. Campbell: I object to that.

The Court: Objection sustained.

Q. Then you omitted from liability a liability shown in the books of the Menlo Club to one Frank Schriber, did you not? A. Yes, that is right.

Q. And I believe you testified that you omitted that liability on instructions of Mr. Campbell?

A. That is correct.

Q. When did Mr. Campbell give you that instruction?

A. During the course of the preparation of this statement.

Q. Well, to refresh your recollection, this was offered, I believe, on January 11th when you were on the witness stand.

Mr. Campbell: I submit it is immaterial as to the exact date when he got such instructions.

The Court: You may proceed.

(Testimony of Ray Weaver.)

A. It was during the week preceding the presentation of the statement. I can't recall exactly. [2230]

Q. The preceding week-end. Do you recall whether that instruction from Mr. Campbell was given to you before or after Mr. Schriber testified in this case?

Mr. Campbell: Objected to as immaterial, if the Court please.

The Court: Objection overruled. Answer the question.

A. I can't exactly recall when Mr. Schriber testified here.

Q. I believe it was before Christmas. Would that aid you in your recollection?

A. Then it was probably after.

Q. And was it before or after Mr. Maundrell testified in this case?

Mr. Campbell: Object to this as immaterial.

The Court: Objection overruled. Answer the question.

A. It may have been after. As I recall, he was still here after the Christmas recess.

Q. He was here between Christmas and New Years.

A. However, the fact as to the statement is immaterial.

Mr. Avakian: I ask that be stricken.

The Court: It may go out.

Mr. Avakian: Would you confine yourself to answering questions, Mr. Weaver?

(Testimony of Ray Weaver.)

Q. Were there any other persons present at the time Mr. Campbell gave you that instruction?

A. There are usually other people present. Who they are at [2231] any particular time, I can't recall.

Q. Did Mr. Campbell give you this instruction following an inquiry from you to him as to what you should do with respect to that liability item?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Q. Did you go to Mr. Campbell and tell him that you didn't know how to treat this and ask his advice?

Mr. Campbell: Same objection.

The Court: Objection sustained.

Mr. Avakian: Your Honor, here is an adjustment made by an expert witness——

The Court: The ruling will stand on that question.

Q. At the time Mr. Campbell gave you this instruction, did you make any statement to him as to whether or not the manner of treatment of this liability that he instructed you to use was correct from an accounting sense?

Mr. Campbell: Objected to as immaterial and incompetent.

The Court: Objection sustained.

Q. At the time Mr. Campbell gave you this instruction, did you make any statement to him to the effect that if you did make the adjustment that he instructed you to make, then proper accounting

(Testimony of Ray Weaver.)

procedure would call for making of certain other adjustments?

Mr. Campbell: Same objection. [2232]

The Court: Same ruling.

Q. Is it customary accounting procedure for an accountant, who is preparing a net worth statement of a partnership, to take instructions from non-accountants as to the manner in which they should prepare the net worth statement?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Mr. Avakian: Your Honor, I should like to show the proper accounting procedure was not followed in this instance.

The Court: The objection is sustained.

Q. Now, you stated on direct examination that an accounting justification for omitting the liability to Gene Schriber from the net worth statement of the Menlo Club was that the transaction, by which the Menlo Club was purchased from Mr. Schriber, was one entered into by Mr. Remmer personally and the liability should be by him personally, do you recall that testimony?

A. Yes. I do not believe I stated that as an accounting justification. It seems to me it would be a legal interpretation.

Q. You thought that was a legal rather than an accounting justification? A. Yes.

Q. I call your attention to this testimony from your direct examination on January 11th, page 2092, and ask you if you recall these questions and answers—question by Mr. Campbell:

(Testimony of Ray Weaver.)

"Q. All right, we will come to that in a moment. [2233]

"Now, Mr. Weaver, as an expert accountant, will you state the reason why the theory for the elimination from the schedule of assets and liabilities of the Menlo Club of the liability to Gen. Schriber?

"A. The liability was eliminated from the Menlo Club because the testimony of Mr. Schriber indicated all his dealings were with Mr. Remmer personally and that Mr. Remmer had in fact pledged or deeded over on a trust deed to Mr. Schriber as security for the liability some of his personally-owned real estate."

Do you recall that question of Mr. Campbell's and your answer? A. Yes.

Q. But it is your present recollection that you thought you were not testifying as an expert accountant, but were merely stating a legal justification for that?

Mr. Campbell: Objected to as argumentative.

The Court: Objection sustained.

Q. Let me ask you this—was the explanation which you gave in answer to that question on January 11th given by you as an accounting explanation or as a legal explanation?

Mr. Campbell: Objected to as incompetent, the explanation which he gave.

Mr. Avakian: It is testing the correctness of the accounting of this exhibit.

Mr. Campbell: It is an attempt to have the witness [2234] characterize his answer.

(Testimony of Ray Weaver.)

The Court: Objection sustained.

Mr. Avakian: I will read to you the next two questions and two answers, on pages 2092 and 2093 of the transcript. Question again by Mr. Campbell:

"Q. So that accountingwise it was treated as a personal liability of Elmer?

"A. That is correct.

"Q. Rather than of the Menlo Club, for that purpose? A. That's right."

Do you recall those questions and answers?

A. Yes.

Q. And do you wish at this time to change either of those answers?

A. No. The accounting treatment is as stated there. Every accounting treatment must, to some extent, be based upon a legal interpretation. I do not see where you can make a distinct dividing line between law and accounting, because accounting treatment necessarily rests on the proper interrelations which are legal matters and as accountants, the accounting treatment must follow whatever legal interpretation they give to certain facts.

Q. So that when Mr. Campbell asked you to give an explanation as an expert accountant, you were really not stating an accounting answer, but rather a legal answer? [2235]

Mr. Campbell: Objected to as argumentative and incompetent.

The Court: Objection sustained.

Q. If the Menlo Club was acquired by Mr. Rem-



(Testimony of Ray Weaver.)

mer from Mr. Schriber in a transaction which was personal to Mr. Remmer and which was not a transaction of the Menlo Club, then will you state, as an accountant, what should be shown as the cost to the Menlo Club of that asset, the Menlo partnership?

A. That depends entirely upon the agreement between the partners, if any, as to what acquisition of cost should be to the partnership.

Q. I notice in Exhibit 165 you show the cost of the business to the Menlo Club partnership as 175 thousand dollars. Would you explain why you treated the cost of the Menlo Club to the partnership as 175 thousand dollars, in view of your statement that you considered the transaction with Mr. Schriber as a transaction with Mr. Remmer personally, not a partnership?

A. Because as a matter of fact we do not consider this as a true partnership in every sense. Therefore, it did not make actually any difference, from the standpoint of computation of the correct income, whether the liability was treated as part of the Menlo Club liability or part of Mr. Remmer's personal liability.

Q. Now, in representing to the Court and the jury here that you have prepared in Exhibit 165 a net worth statement of the [2236] Menlo Club, partnership, you assumed, at least for that purpose, did you not, the Menlo Club was a partnership?

A. No, sir. This says Menlo Club assets and liabilities.

(Testimony of Ray Weaver.)

Q. Did you represent this as a net worth statement of the partnership? A. I——

Mr. Campbell: Just a minute—I object to that as incompetent.

The Court: Objection sustained.

Q. Whose net worth does Exhibit 165 represent?

Mr. Campbell: Objected to—the document speaks for itself as to what it is.

The Court: He may answer the question.

A. I believe it represents Mr. Remmer's.

Q. But you characterize it as the Menlo Club, is that right?

A. Businesses are often carried on under fictitious names, yes.

Q. Now, then, if this Exhibit 165 represents the net worth of Mr. Remmer individually rather than any partnership, will you tell us why you did not list the liability to Mr. Schriber, which you said was a personal liability of Mr. Remmer, as a liability on this exhibit?

A. Because it made no difference whether it was listed here or in his personal net worth. It didn't make a cent of difference because whether or not you want to enter on this sheet, on the sheet containing his personal assets and liabilities, [2237] makes no difference in the result.

Q. As I understand it—correct me if I am wrong—the reason you treated this Exhibit 165 as Menlo Club assets and liabilities, was that you were taking a particular business of Mr. Remmer's which

(Testimony of Ray Weaver.)

you considered solely his business, and setting up assets and liabilities of that particular business, is that right?      A. That is right.

Q. Now, in preparing a net worth statement, that is a statement of assets and liabilities, of a particular business of an individual, is it not proper accounting procedure to list in that statement all of the liabilities that relate to that business?

A. It depends somewhat on facts. It depends whether or not they actually are liabilities relating directly to the business or liabilities only of the individual. As far as this is concerned, I would be very happy to put that in here and take it off the personal liabilities, because it really is just an academic matter.

Q. You have not presented here any exhibit of personal liabilities and assets of Mr. Remmer?

A. No, that is correct.

Q. So you can't change in the other exhibit?

A. I believe it could be arranged.

Q. I mean there is none in evidence?

A. No, not yet.

Q. Now, if you listed on Exhibit 165 the liability to Mr. [2238] Schriber at the end of 1945 and also at the end of 1946, the net worth figure shown on Exhibit 165 would be reduced by the amount of the liability on those respective dates, would it not?

A. Yes, but I would also remove it from his personal net worth and therefore increase the net worth by precisely the same amount.

(Testimony of Ray Weaver.)

Q. Let us not talk about an exhibit not in evidence.      A. You can't avoid it.

Mr. Golden: You can avoid it all right, your Honor.

The Court: There is no question before the Court.

Mr. Golden: It is very easy to avoid.

The Court: He has answered the question.

Mr. Golden: I ask his remark, "You can't avoid it," go out as not responsive.

The Court: It will stand.

Mr. Golden: I will assign it as error.

Q. Mr. Weaver, did you hear Mr. Schriber's testimony in the court room that at the end of 1945 there was still due and owing to him from Mr. Remmer, on account of the purchase of the Menlo Club, the amount of \$125,000?      A. Yes.

Q. Would you tell us, then, what the net worth of the Menlo Club would be at December 31, 1945, if you adjusted your Exhibit 165 by showing that liability of \$125,000 to Mr. Schriber on that [2239] date?

A. It would be 125 thousand dollars less than shown here.

Q. And you have shown what figure as the net worth on that date?      A. \$183,647.94.

Q. So that would be reduced then, would it not, to the figure of \$58,647.94?

A. That is right.

Q. And did you hear Mr. Schriber's testimony that at the end of 1946 there was still due and

(Testimony of Ray Weaver.)

owing to him from Mr. Remmer on account of the purchase of the Menlo Club the sum of 75 thousand dollars?      A. Yes.

Q. And would you tell us, then, what the net worth of the Menlo Club would be on Exhibit 165 if you subtracted from the net worth figure of \$192,836.47 shown thereon that liability of 75 thousand dollars?

A. It would be 75 thousand dollars less.

Q. Can you give us the figure? It would be \$117,836.47, would it not?

Mr. Campbell: We will accept counsel's statement.

A. That is right.

Q. In computing net income on the net worth method, Mr. Weaver, it is true, is it not, that you ignore any expenditures which are deductible as deductions under the income tax law?

Mr. Campbell: I object to that as not proper cross-examination. [2240]

The Court: I don't know. You talked on direct examination about investigations he made in different phases. Objection will be overruled.

A. I wouldn't say—there are two general methods by which you can take into account the increase in net worth in determining income. One is to add to the increase of net worth federal income taxes paid, living expenses and any other non-deductible expenditures, in order to arrive at the correct income for purposes of return. You might also add thereto all of the deductible expenditures

(Testimony of Ray Weaver.)

and then deduct them again and you arrive at the same result.

Q. That is what I say, in computing the net income any expenditures which are deductible are immaterial, isn't that correct?

A. That's right.

Q. In computing net income on net worth method, is it important to determine whether you are using the cash receipts and disbursements method of accounting rather than the accrual method of accounting? A. Yes.

Q. So that we may all understand those terms, under the cash receipts and disbursements method, income is considered to have been received at the time that the money actually comes to the taxpayer, isn't that correct, at the time he actually receives it? [2241]

A. Generally, yes.

Q. And expenses are considered to be actual expenses at the time they are actually paid, isn't that correct? A. Generally speaking, yes.

Q. Under the accrual method of accounting, income is considered to have been received by the taxpayer at the time that he acquires a legal right to receive it, isn't that true?

A. Well, generally speaking, yes.

Q. In other words, then, to use an example to clarify that—if I sell a particular item as personal property, let us say, to you in December of 1951 and you agree at that time to pay me a thousand dollars for it and then you actually paid me the fol-

(Testimony of Ray Weaver.)

lowing January in 1952, under the cash receipts and disbursements method, I would be considered to have received that money in January, 1952, would I not?

A. If you are speaking of the sale of personal property, there might be some distinction there, because sales of capital assets wouldn't necessarily come under cash and accrual methods.

Q. With that clarification, that would be true; I would be considered to have received that money from you on cash receipts and disbursements method in January, when you actually paid it?

A. Yes.

Q. If instead I was on the accrual method of accounting, I would be considered to have received that money in December of [2242] 1951 when you agreed to pay it, isn't that right?

A. Well, there is sometimes a slight distinction between the legal and accounting usage. For example, you might actually receive legal title by purchasing some goods FOB shipping point, which would actually be received the following year. Actually your legal title arose from the preceding year, but from accounting standpoint it would not be recorded until the receipt of the goods in the following year, so, with some exceptions like that, generally speaking that is right.

Q. Let us assume I deliver in December and you agree to pay for the purchase but do not actually pay until the following January, under the ac-

(Testimony of Ray Weaver.)

crual method I would be considered to receive that money in December, would I not?

Mr. Campbell: Objected to as incompetent. There are so many elements to be considered and I think they are not within the issues here.

The Court: He may answer this question.

A. If you take the matter of personal property, you get no question of personal assets. If you restrict your statements to sales of retail sales, that would be something to which hardly any exception could be taken.

Q. Let us take a retail store as an example first. A merchant who sells merchandise in a retail store to a customer on a charge account basis, shall we say, and delivers merchandise to the customer in December, 1951, enters it in the charge [2243] account and then the customer comes in in January and pays the bill. If that merchant were on a cash receipts and disbursements basis, he would not treat that money as income until he received it in January?

Mr. Campbell: I object to the question in that form because it is obvious a merchant could not be on a cash receipts and disbursements basis.

The Court: You may answer the question.

A. Well, if it is on cash basis, that is the time it would be taken into income, yes.

Q. If he were on an accrual basis, he would take it into income in December, at the time he made the sale, isn't that right?      A. That is right.

Q. And he would have to report it as income



(Testimony of Ray Weaver.)

in December even though he didn't get it until the next year?      A. Yes, that is correct.

Q. And when he got it the next year, being on accrual basis, he wouldn't report it again the next year, he would already have reported it?

A. That is right.

Q. With that preliminary explanation as to the distinction between cash receipts and disbursements basis and accrual basis, the question is, in computing income on net worth method it is important, is it not, in setting up the assets [2244] and liabilities to determine whether you are setting them up on a cash method or on accrual? Do you understand the question?

A. It is impossible to set up—well, let us have your question again.

Mr. Avakian: I will reframe it.

Q. In computing the net income of a taxpayer on net worth method, if there was money owed to him on account of business transactions which he had had at the end of the period covered by your net worth computation, the result which you would reach would be different if you used the cash method than if you used the accrual method, would it not?

A. Yes, the result in the two methods should be different. It might turn out to be the same in some instances.

Q. Let us go back to this illustration that you suggested of the merchant. If you were computing the income of that merchant on net worth method

(Testimony of Ray Weaver.)

as of say December 31, 1946, and if on December 31, 1946, that merchant had come to him on charge account sales ten thousand dollars in money, if you were using the accrual method in your net worth computation, you would set up that ten thousand dollars accounts receivable as an asset, would you not?

Mr. Campbell: Objected to as assuming facts not in evidence, incompetent and immaterial.

The Court: You may answer the question.

A. If he were on accrual basis? [2245]

Q. Yes.

A. You would set up accounts receivable as an asset?

Q. Yes. A. At the end of the year?

Q. That is my question.

A. That is true, of course, if that is not considered in any preceding year when you may have accounts receivable precisely the same amount, which might offset those, so I say there could be a situation where there would be no difference in income under any method.

Q. As to any particular time that you were making net worth computation, you would include the accounts receivable if the taxpayer were on accrual method? A. Yes.

Q. But you exclude accounts receivable if the taxpayer were on the cash method, would you not?

A. Not necessarily. It depends what the accounts receivable arose from.

(Testimony of Ray Weaver.)

Q. I am talking about this merchant who has sold this merchandise on credit.

Mr. Campbell: That is the basis upon which I make my objection—it is immaterial and incompetent.

The Court: I think so.

Mr. Avakian: We are using an example exactly parallel as to the testimony of this [2246] witness

The Court: He is about to answer the question.

(Question read.)

The Court: Let him complete the answer.

A. For example, if accounts receivable arose from the assets purchased by a related business, it would be improper to exclude the accounts receivable from the balance of the related business. Do you understand my statement?

Q. If accounts receivable arose from the credit extended to customers in the course of a business, then on the cash method you would exclude those accounts receivable in computing the net worth as of that time?

A. If they arose from extension of credit for the sale of merchandise. If they arose from the extension of cash loans, the situation would be different.

Q. What is your answer as to the first view that you stated?

A. If they arose from the sale of merchandise, then the accounts receivable would not be set up.

Q. Now, in preparing Exhibit 165, the assets

(Testimony of Ray Weaver.)

and liabilities of the Menlo Club, did you use the cash receipts and disbursements method or did you use the accrual method?

A. Mostly the cash receipts and disbursements method. It is impossible to secure an accurate picture by sticking to any one particular method specifically.

Q. As to which items did you use the cash receipts and disbursements method and as to which items did you use the accrual [2247] method in preparing Exhibit 165? Go down each of the items in the exhibit and give us your answer.

A. I can't do it just like that. Some of these items are composed of a number of different elements.

Q. Would it take you some time to work that out, Mr. Weaver? If so, I will pass that.

A. Yes.

Q. Let me ask you this—I call your attention to prosecution's Exhibit 89 for identification, which is the original partnership return of the income of the Menlo Club for the year 1945, and I call your attention particularly to item 4 on the 4th page, which states, "check here this return was prepared on cash or accrual basis." Did you notice that particular item in the course of your examination?

A. Yes, I did.

Q. And the check there is that that was prepared on the cash basis, is that correct?

A. That is where the check is. It is not strictly accurate.

(Testimony of Ray Weaver.)

Q. That is what the check is on the return?

A. Yes.

Q. And I call your attention to prosecution's Exhibit 90, which is the original partnership return of income of the Menlo Club for the year 1946, and I call your attention to item No. 5 on the third page, "check whether this return is prepared on cash or accrual basis," and ask you whether that likewise [2248] shows it was prepared on cash basis?

A. That is what the check shows, yes.

Q. And then I will show you defendant's Exhibit "Y," which is amended partnership income return of the Menlo Club for the year 1945, and ask you whether on question 4 on page 4 there is likewise a check mark indicating that the return was prepared on the cash basis?

A. That is what the check mark states, yes.

Q. And I show you prosecution's Exhibit 91, which is amended partnership return of income of the Menlo Club for the year 1946, and ask you whether question No. 5 on page 3 has check mark indicating that that return was prepared on the cash basis?

A. That is what the check mark shows.

Q. Is it your opinion, as an accountant, that the returns of the Menlo Club should have been prepared on some other basis than cash basis?

Mr. Campbell: Objected to as incompetent, not within the scope of direct examination.

The Court: Objection sustained.

(Testimony of Ray Weaver.)

Mr. Avakian: Your Honor, he has testified he used accrual basis in part in preparing Exhibit 165 and in view of the fact——

The Court: You may answer the question.

A. The return states it was determined on cash basis which is inaccurate. It was not prepared wholly on cash basis, since it includes [2249] inventories.

Q. Did you, or any of the members of your staff, in any of your discussions with either Mr. Ayton, the public accountant, or Mr. Maundrell, state to them that in your opinion the return of the Menlo Club should be prepared on some basis other than the cash basis?

Mr. Campbell: Objected to as calling for a purported conversation after the fact; has no materiality here whether they did or did not make such statement?

The Court: Objection sustained.

Mr. Avakian: Your Honor, there has been extensive examination, inquiries made, talks had, subjects covered, in their examination and we would like to show that the things that are being charged here as fraudulent——

The Court: The ruling may stand.

Q. I will call your attention to Exhibit 165, the first item is designated "Cash on hand bank roll, poker sheets Exhibit 114A," and for December 31, 1946, you have the item of \$10,003. Would you show me the particular sheet, preliminarily, of Exhibit 114A on which that item appears, and then I

(Testimony of Ray Weaver.)

will ask you a question. You are referring to page 2 and you are referring to the item of "New Top, \$10,003," is that correct?

A. Yes, that is right.

Q. And that is the basis for the entry on Exhibit 165 that cash on hand bank roll on December 31, 1946, was \$10,003, is that correct? [2250]

A. That is right.

Q. Did you hear the testimony of Mr. Maundrell in this case that the bank roll figures shown on Exhibit 114A included the amount of money which was owed to the Menlo Club on markers?

A. Yes; he also has testimony that the markers represented advances in cash.

Q. And did you recall his testimony that the names and amounts in the lower right-hand corner of these poker sheets, which are in evidence as Exhibits 114, 114A and 114B, represent the markers owing to the Menlo Club?

A. Yes; and also his testimony that they were considered to be cash and part of the bank roll.

Q. And the amount shown as the total of the markers due the Menlo Club on December 31, 1946, according to page 2 of Exhibit 114A, is \$6,770, is that correct?

A. That is on the sheet, yes.

Q. So then, would it not be correct to say, Mr. Weaver, that on December 31, 1946, the bank roll of the Menlo Club consisted of \$6,770 in markers and \$3,233 in cash?

A. If you want to say that way, it really doesn't

(Testimony of Ray Weaver.)

make any difference. They have testified that the markers were treated as part of the bank roll and we tried to follow that determination rather than change it.

Q. But the bank roll figure you have designated as cash consisted then part of cash and part markers, is that correct? [2251]

A. That is right.

Q. And if you have markers in amount of \$6,770, treated as accounts receivable of the Menlo Club, arising in the course of its business dealings with its customers, then on the cash method of accounting, would you not, as a matter of proper accounting procedure, exclude those accounts receivable in computing the net worth of the Menlo Club, for the purpose of computing the net income?

A. No, sir.

Q. You would not?

A. The Menlo Club is not selling.

Q. The Menlo Club—you are aware of the fact that the Menlo Club was conducting a card room?

A. It was not selling any product. It was advancing cash for such markers.

Q. Can you answer my question?

Mr. Campbell: I submit he has answered it.

(Question read.)

Q. May we have that question answered?

The Court: Yes, you may answer that question.

A. That is a card room where people were charged for playing cards. It isn't selling.



(Testimony of Ray Weaver.)

Q. Do you recall the testimony of Mr. Maundrell and Mr. Kyne that these markers represented obligations of players of the Club who played there, lost money, and were unable or unwilling [2252] to pay their losses and so they put in a marker with the Club instead?

Mr. Campbell: Objected to as assuming facts not in evidence.

The Court: Objection sustained.

Mr. Avakian: Is there any doubt, your Honor, that was their testimony?

The Court: Yes.

Mr. Campbell: That was my objection.

Mr. Avakian: May we have an opportunity tomorrow to show your Honor the testimony from the record?

The Court: Yes.

Mr. Avakian: We will defer this question until then.

Q. Now, you state in Exhibit 165 that the bank roll of the Menlo Club on December 31, 1945, was ten thousand dollars and the reference is Exhibit 114A. Will you show me the particular entry on Exhibit 114A which contains that figure?

A. Right there in their poker sheets in evidence.

Q. Not in Exhibit 114A?

A. I may have another exhibit.

Q. Yes, there are. I gave you that because that is what your Exhibit 165 said. I will hand you Exhibits 114 and 114B also.

(Testimony of Ray Weaver.)

A. Apparently that was meant to refer to 114 and 114A.

Q. You are handing me Exhibit 114 as the exhibit which shows the amount of the bank roll, is that right? [2253] A. Yes.

Q. And which of the two sheets is the one that you used? A. The first sheet.

Q. Which is dated January 1, 1946, is that correct? A. That is right.

Q. And your Exhibit 165 is incorrect in designating 114A; should also designate 114?

Mr. Campbell: I think inspection of the exhibit shows 114 dash A and he has stated he meant to refer to 114 and 114A. I think the record is clear.

Mr. Avakian: Mr. Campbell's statement is incorrect. There is no dash there. It is 114 parenthesis A parenthesis. Do you stand corrected?

Mr. Campbell: No, I think the record speaks for itself.

The Court: Let us move along.

Q. Mr. Weaver, will you tell us is there any dash between 114 and the letter "A"?

A. I probably omitted it in the schedule.

Q. Is there one there?

A. No. Shall I add one?

Mr. Avakian: Your Honor, I think we should have it correct. Will it be all right for the witness to add the designation?

The Court: He may do so.

Q. Now, in Exhibit 114 there is shown as BR

(Testimony of Ray Weaver.)

ten thousand dollars [2254] on 1-1-46 and I assume that was the amount on December 31, 1945?

A. We had no receipts in 1945. All the 1945 receipts were destroyed.

Q. So you used the same figure?

A. That is correct, beginning of the year.

Q. On that same exhibit also are markers in amount of \$8,503?

A. That is the amount on the sheet, yes.

Q. So that the bank roll figure of ten thousand dollars really consists of \$1497 in cash and \$8503 in markers?

A. If those figures are right.

Q. Those are the figures you used, aren't they?

A. No, I used just the one figure.

Q. You stated in your direct examination, with regard to the improvements which you capitalized in Exhibit 165, that another agent had a schedule of the specific items that entered into that and you were going to produce it later. Do you have that now?

A. My recollection is that my testimony there referred to the detail of the accounts receivable.

Q. Which item is that?

A. That is the second item.

Q. That is "Accounts recivable and advances for purchase of equipment for Mr. Remmer's office, 50 Mason Street"? A. Yes.

Mr. Campbell: I think that schedule is in evidence. [2255]

Mr. Avakian: That is Exhibit 174, I believe.

(Testimony of Ray Weaver.)

Q. Do you have a schedule showing the particular items that are included in improvements which you capitalized in the years 1945 and 1946 in preparing Exhibit 165?

Mr. Campbell: Just a minute—I object to the question in that form because there are two pages—are you referring to accounts receivable?

Mr. Avakian: No; could we have the question?

(Question read.)

A. I believe reference to the exhibits indicated along the side of each improvement would give us those amounts.

Q. What exhibits are you referring to in your statement?

A. 133K, 134, 135, 136 and 132C.

Q. Those are various cancelled checks and check stub books relating to payment for the particular expenditures, isn't that correct?

A. Yes, there might have been these few expenditures that a schedule might not have been prepared with reference to the exhibit.

Q. My question was, for the purpose of determining whether you are able now to tell us the specific improvements which you capitalized in preparing Exhibit 165?

Mr. Campbell: That has been answered. He referred to specific checks. He said the checks would show that, if they could be shown to him. [2256]

The Court: You may answer the question.

A. I have no schedule here. If I could see the checks I could tell you very shortly.

(Testimony of Ray Weaver.)

Q. Very well. Let me ask you this—do you think it would speed up your testimony if you did this during recess? A. Yes.

Mr. Campbell: I suggest he has a number of things accumulated for Mr. Weaver to do.

The Court: Yes, let us get along with the checks.

Mr. Campbell: I have a schedule here prepared by one of the other agents, might expedite the matter. We can mark it.

Mr. Avakian: May I see that?

Mr. Campbell: May that be given a number for identification?

The Clerk: 181.

Q. I show you prosecution's Exhibit 181 for identification. Mr. Weaver, would you take a look at that and advise us whether that would assist you in expediting your testimony on this point?

A. Yes, it would.

Q. Now, referring first, Mr. Weaver, to the improvements which you capitalized for the year 1945, Exhibit 165 shows the amount as \$920 and the reference is Exhibit 133K. Does your schedule before you show what that item consisted of?

A. Yes, 133K refers to check issued to H. C. Evans on November 26, 1945, for equipment for the Menlo Club, in amount of \$920. [2257]

Q. Do you recall from the testimony in this case what kind of equipment that was?

A. I believe the testimony is simply that this equipment was for the Menlo Club.

Q. I beg your pardon?

(Testimony of Ray Weaver.)

A. I believe the testimony is it was simply equipment for the Menlo Club.

Q. You do not know what kind of equipment?

Mr. Campbell: I submit it speaks for itself.

Mr. Avakian: I am asking if he recalls.

A. I can not recall all the words in the transcript, no.

Q. Of course, the question whether that should be treated as current business expenditure rather than being capitalized as a depreciable asset, would depend in part at least on the nature of the property, would it not?

A. If it is testified to as equipment, that in itself characterized it as something having a long term of life. Otherwise it would have been characterized as an expense.

Q. How was it treated on the books of the Menlo Club?

A. We have no regular accounts.

Q. You made an analysis of the disbursements and expenses of the Menlo Club, did you not, you or the men on your staff?

A. Yes. To reply to this particular item, how it is treated, I would have to see the book.

Q. Would you like to look at any particular book? [2258]

A. Yes, I would like to look at the cash receipts and disbursements for 1945.

Q. I will hand you prosecution's Exhibit 128. Is that the book which will assist you? You want reference to the check number?

(Testimony of Ray Weaver.)

A. No, I see the check right here.

Q. You are referring to what page of that exhibit?      A. D-27.

Q. D-27 of Exhibit 128. And how is that entered in the books?

A. This is simply record of checks issued with various account headings for expenses and a general column heading for their payments, which in normal accounting practice——

Mr. Avakian: Just a moment—let us not get into normal accounting practice. How is it entered in this book?

A. Without studying the accounting practice, this column is treated——

Mr. Avakian: Just a moment—if you can not tell me, say so. If you can, will you tell me how it is entered in this particular book of the Menlo Club?

Mr. Campbell: You are asking his opinion—are you asking him to read the entries?

Mr. Avakian: Read the entries, surely.

The Court: I thought that book was brought out for a certain purpose. We have four or five questions. It was brought out for the purpose of aiding this [2259] witness in answering some previous questions, but now it is the subject matter of several questions.

Mr. Avakian: The same question was asked, only he wants to talk about normal accounting practice. My question to him is, can he tell me

(Testimony of Ray Weaver.)

how this particular expenditure was entered in the books of the Menlo Club?

Mr. Campbell: I submit the answer calls for the opinion of the witness.

The Court: Let the witness answer the question.

A. It was entered in a column which would indicate it to be a capital—

Q. Would you tell us what the column is?

A. Under payments.

Q. Is there anything in that column that says capital expenditures?

A. That is the reason I said you have to understand normal accounting practice to get that.

The Court: We will take a recess.

(Jury and alternate jurors admonished and recess taken at 4:00 p.m.) [2260]

Wednesday, January 30, 1952—10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. WEAVER**

resumed the witness stand on further

**Cross-Examination**

By Mr. Avakian:

Q. Mr. Weaver, since we adjourned yesterday, did you make a further search of your records and files upstairs in this building for a memorandum



(Testimony of Ray Weaver.)

of your meeting in Mr. Thatcher's office April 8, 1948?

A. Yes, I did. I was not able to find it.

Q. Are you satisfied now that you looked as much as you can and further search would be pointless?

A. Yes, that is right.

Q. When is the last time you saw that memorandum?

A. It was at least a year ago.

Q. You don't know whether it became lost before you brought those records here or after?

Mr. Campbell: Objected to as immaterial. He has testified concerning it.

(Question read.)

The Court: You may answer the question.

A. No.

Q. Yesterday, at the close of testimony, Mr. Weaver, we were talking about Exhibit 165 and particularly certain items there on [2261] which you had capitalized. Do you have before you the exhibits that you were reading yesterday?

A. No, I do not have them.

Q. I will get them from the clerk. I will hand you Exhibit 165. We were talking particularly about the item of \$920 in 1945 which you capitalized and which you designated in Exhibit 165 as improvements in 1945 Exhibit 133K.

A. Yes.

Q. And I show you the cancelled check, which is in evidence, Exhibit 133K, payable to H. C. Evans & Company on November 26, 1945, in amount of

(Testimony of Ray Weaver.)

\$920, signed Harold H. Maundrell and endorsed on the back, "Pay to First National Bank of Chicago or order H. C. Evans & Company." Does that check represent the particular expenditure which you capitalized in Exhibit 165?

A. Yes, it does.

Q. And I believe you testified that the basis upon which you determined that that particular check should be capitalized was the testimony of Mr. Maundrell, is that correct? A. Yes.

Q. I call your attention to the only testimony which I have been able to find in the record, Mr. Weaver—

A. And I might state the expenditure item in the Menlo Club records.

Q. The records in the Menlo Club do not indicate whether it was a capital or current expenses item, do they? [2262]

A. Yes, it did. The manner in which it was entered indicated that. That was what I was trying to tell you yesterday.

Q. Very well, let us get that exhibit. I hand you prosecution's Exhibit 128. I believe the particular page you were referring to yesterday was D-27, is that correct? A. Yes.

Q. Now, will you tell us what is entered there on that page with respect to this check?

A. Well, with respect to this check, under the date column is November 26 and under "Check No." 1569, under the column "Paid" to H. C. Evans & Company, under the column "Paid out by

(Testimony of Ray Weaver.)

check" \$920. Then there are a number of columns for various expenses and purchases of merchandise for resale.

Q. Is there any entry in those columns with respect to this entry?

A. And salary payments. No. Then there is a column headed under "Payments," name of town, E. R. equipment, and amount paid \$920.

Q. Is that the total on that page?

A. Except as appears in the total of columns in which it is entered?

Q. \$920 is included in the bottom of the column?

A. Yes.

Q. Now, you were about to turn to another page. Is there an entry elsewhere in that book with respect to that item?

A. No. [2263]

Q. Now, you capitalized that expenditure, \$920, as an asset which should be deducted on a depreciation basis over a period of ten years, is that correct?

A. That is right.

Q. Do you know what that equipment was that was purchased with that check?

A. Yes, I believe I do.

Q. What was that equipment?

A. Mr. Maundrell told me informally—not in his testimony here—that that represented 21 tables. He had intended setting up a gambling establishment on the second floor of the Menlo Club.

Q. Twenty-one tables, did you say?

A. Yes.

(Testimony of Ray Weaver.)

Q. Did you check with the H. C. Evans & Company with respect to that?

A. No, I didn't see any need to.

Q. You did have inquiries made regarding this case in Chicago, did you not? A. Some, yes.

Q. And you knew H. C. Evans & Company was located in Chicago?

A. From the notation on the check, yes.

Q. You made no inquiry of the H. C. Evans & Company records to determine just exactly what was purchased with that check?

A. No, I had no reason to doubt Mr. Maundrell's statement.

Q. Apart from what Mr. Maundrell told you informally, did you [2264] base your decision to capitalize this item on any testimony that was given in this case?

A. Partly on Mr. Maundrell's testimony, I believe.

Q. I call your attention to Mr. Maundrell's testimony on this point at page 1222 of the transcript, the question by Mr. Campbell:

"Q. Let us withdraw that. That is 133J. Now as to the others?

"A. Check 1569 made to H. C. Evans & Company for \$920, was for equipment to be used in the Menlo Club.

"Q. That is 133K."

Do you recall any testimony of Mr. Maundrell in this case, regarding this matter of \$920 check, other than what I have read to you?

(Testimony of Ray Weaver.)

Mr. Campbell: Objected to, the record speaks for itself.

The Court: Objection sustained.

Mr. Avakian: I want to find out whether he was relying in preparing this exhibit on any other testimony of Mr. Maundrell. That is all I have been able to find. That is what I am getting at.

The Court: You may answer the question.

A. I looked at Mr. Maundrell's testimony in detail. What there is in respect to this particular item, I wouldn't attempt to recall without again referring to the testimony. [2265]

Mr. Avakian: I would be glad to make this book available to you.

A. It might save considerable time. I might say this entry in the book is sufficient; it is a capital item.

Q. That is sufficient for you? A. Yes.

Q. Now, in respect to the 1946 item of expenditure which you capitalized in total amount of \$2,355.16, I believe the total was set forth in the memorandum marked for identification yesterday. It is 181 for identification. Would you like to refer to this to refresh your recollection as you testify, Mr. Weaver? A. Yes, I would.

Q. Very well. Will you give me the first expenditure that enters into that total amount which you capitalized?

A. You are speaking of 1946 improvements?

Q. Yes, that is right. Could you give me the exhibit number of the check so I can find it here?

(Testimony of Ray Weaver.)

A. Yes.

Mr. Campbell: I think that is set forth on Exhibit 165, 134-5-6.

Mr. Avakian: There are about 30 or 40 checks in that exhibit, Mr. Campbell. I want the particular one that refers to the first item.

A. 134-D. [2266]

Q. Will you tell us what that particular expenditure was as to amount and date and person to whom it was paid?

A. It was paid to Bernhards under date of February 15, 1946, in amount of \$830.

Q. What was the next item?

Mr. Campbell: Do you have the check number on that?

Mr. Avakian: The check number, Mr. Campbell, is No. 1811.

A. The next item is 135-I, paid to S. Petersen & Son, under date of 5-10-46, in amount of \$232.64.

Mr. Campbell: Check number?

Mr. Avakian: I am looking for it. The check number Mr. Campbell, is 2106.

Q. Do you know what that check was issued for?

A. That was for installation of lavatory at 18 Turk Street.

Q. And incidentally, the preceding check was for a carpet and booths at the Menlo Bar, is that correct?

A. Yes, that is right.

Q. And what is the next one?

(Testimony of Ray Weaver.)

A. 136-A to S. Petersen & Son on 6-15-46, in amount of \$356.90.

Q. And that was for expenses in connection with the installation of a new bar at the Menlo Bar?

A. That was installation.

Q. Is that the total cost of it? [2267]

A. I don't know whether it was the total cost or not.

Mr. Campbell: What is the date of that?

A. 6-15-46.

Q. And what is the next item?

A. 136-B to United Studios on 6-24-46, in amount of \$105.

Q. And do you know what that was for?

A. That was for installation of Neon tubing in the Menlo Bar.

Mr. Campbell: I didn't get the date or check number.

Mr. Avakian: Check No. 2251, dated June 24, 1946, in amount of \$105, payable to United Studios, Exhibit 136-B.

Q. That you say was for Neon tubing?

A. Yes.

Q. Upon what do you base that answer, Mr. Weaver?

A. I believe it was in Mr. Maundrell's testimony. I will have to refer to it.

Q. Let me see if this will refresh your recollection. I will read you Mr. Maundrell's testimony on that point, page 1243 of the transcript—I will withdraw the question.

(Testimony of Ray Weaver.)

Mr. Campbell: I am going to object to the last question. The matter is in evidence here in plaintiff's 136, which is in evidence, the check book of the company.

The Court: There is no question before the Court. He withdrew the question.

Q. Exhibit 136, which is the check stub book, contains an entry for that check, which states, "Installation of Neon tubing [2268] in bar," is that right? A. Yes.

Q. Will you give us the next item?

A. 136C payable to cash and cashed by Mr. Kyne under date of 7-18-46, in amount of \$126.46.

Q. And do you know what that was for?

Mr. Campbell: What was the check number on that?

Mr. Avakian: 2311.

A. That was for purchase of an adding machine.

Q. And you included that in capitalizing here on a ten-year basis? A. Yes, that is right.

Q. What is the next one?

A. 136-D, United Studios.

Q. In amount of how much?

A. \$105, on 8-30-46.

Q. And I call your attention to Mr. Maundrell's testimony on that question, page 1243 of the transcript.

"Q. I call your attention to plaintiff's Exhibit 136D, check No. 2426, dated August 30, 1946, payable to the United Studios in amount of \$105, and



(Testimony of Ray Weaver.)

ask you for what purpose that check was issued?

"A. That was for electrical work that was completed in the Menlo Bar on Turk Street." [2269]  
And that was from page 1243 of the transcript. Is it on the basis of that testimony that you decided to capitalize that item?

A. These were all capitalized either on the basis of Mr. Maundrell's testimony, on the basis of the entry in the check stub book or entry in the record. I can't remember in each instance which one I relied on or whether all were similar.

Q. What is the next item?

A. The next item is 136-E to B. & H. Refrigerator Service on 9-6-46, in amount of \$276.89.

Mr. Avakian: Do you want that check number, Mr. Campbell?

Mr. Campbell: I have it, 2436.

Q. Does the check stub on that show for what purpose the check was issued?

A. Yes, it states "Monthly service charge and installation new unit ordered by Joe Silver."

Q. Do you know what portion of that charge was for monthly service charge?

A. No, I do not.

Q. To the extent that the charge was made to a monthly service charge, it would not be proper to capitalize that?

A. No, that is right. I wouldn't have included it if I knew the full amount.

Q. You did, however, include the full amount in capitalizing?      A. I did. [2270]

(Testimony of Ray Weaver.)

Q. Did you make any inquiry of the B. & H. Service Company to determine what was the monthly charge?

A. No, the amount was not great.

Q. That is why you did not make any inquiry?

A. That is right.

Q. What was the next expenditure which you capitalized?

A. 136-F to B. & H. Refrigeration Service on 9-12-46, in amount of \$322.27.

Q. What is the number of that check? Do you have it there?

A. I do not have the check.

Q. It is 2465. Do you recall this testimony of Mr. Maundrell with regard to that check, and I am reading from pages 1245 and 1246 of the transcript:

"Q. I call your attention to plaintiff's Exhibit 136F, check dated September 12, 1946, check No. 2465, payable to B. & H. Refrigeration Service, in amount of \$322.27, and ask you for what purpose that was issued?

"A. That was also for refrigeration service on the bar, Menlo Bar.

"Q. Wasn't that for a complete new unit?

"A. Well, it is a new unit. There are four or five bills for the new bar installation that we put into the bar.

"Q. Was that the purpose of that check? [2271]

"A. Yes, sir."

(Testimony of Ray Weaver.)

And then after a few questions and answers on another matter, Mr. Maundrell said:

"May I see the last two checks, please?"

"Q. I am handing to you government's Exhibits 136E and 136F.

"A. Check No. 2465, dated September 12th, was charged as repairs and replacements.

"Q. Yes. That is Exhibit 136F?"

"A. That's right.

"Q. All right, sir."

Do you recall that testimony of Mr. Maundrell that that check in amount of \$322.27 was charged as repairs and replacements?

A. Yes. A complete installation would be capitalized. The check stub itself shows complete new unit.

Q. You know, do you not, that was deducted on the 1946 Menlo Club return as repair and replacement expense?

A. I wouldn't know without checking the figures.

Q. Let me reframe the question. Do you have before you the book that would show how that was entered in the books of the Menlo Club?

A. No, I have not.

Q. Do you have Exhibit 128 before you, or is that for the wrong year?

A. It is not year. [2272]

Q. I show you prosecution's Exhibit 1296, the book of the Menlo Bar for the year 1946, and I call

(Testimony of Ray Weaver.)

your attention particularly to the entry on a page headed "Payments September, 1946," the first entry on the page is September 12, check No. 2465, paid to B. & H. Refrigeration Service, \$322.27, and I call your attention particularly that that amount is entered in column headed "Repairs and Replacements." Do you note that?      A. Yes.

Q. Now, does that indicate to you, as an accountant, that Mr. Maundrell, in making the entry in the book, classified this particular expenditure as a repair and replacement expenditure?

A. That is right. I wouldn't necessarily follow that.

Q. Your opinion is that that was incorrect, that it should have been capitalized, is that right?

A. Yes, that is right.

Q. If it were treated as a repair and replacement item, it would not enter into the December 31, 1946, list of assets that you have computed on Exhibit 165, would it?

A. No, nor would depreciation be allowed?

Q. The distinction between a repair and replacement item and a capital item is, in the case of repair and replacement, that is deducted in the year of expenditure, whereas in the case of capital item, that is deducted over the life of the asset on depreciation basis, is that right?

A. Where repairs and replacements are of a minor nature, you [2273] wouldn't capitalize. The distinction between capital and major expenditures is one which would require rather detailed discus-

(Testimony of Ray Weaver.)

sion. Any replacements which were of major nature, such as a new unit, should be capitalized.

Q. Accountants frequently disagree on the basis as to whether a particular repair item is sufficiently major in importance to be treated as capital rather than current expenditure, do they not?

Mr. Campbell: Objected to as argumentative, immaterial.

The Court: Objection sustained.

Q. Isn't it true, Mr. Weaver, that the determination of whether a particular expenditure is sufficiently large and important to be capitalized rather than being treated as current expense involves, to some extent, a matter of accounting?

A. Theoretically the nature of the item is the only determining factor. As a practical matter, it might be exercise of judgment.

Q. As a practical matter, accounting judgment is to be exercised?

A. I don't know whether you would call it accounting judgment or whether—

Q. Judgment as to the matter?

A. That is right.

Q. And it is true, is it not, and has it not been true in your long experience, that on many occasions the courts have disagreed [2274] with the Bureau of Internal Revenue as to whether a particular item should have been capitalized or not?

Mr. Campbell: Objected to as incompetent and immaterial.

The Court: Objection sustained.

(Testimony of Ray Weaver.)

Q. Are there other items that enter into that group of expenditures which you capitalized?

A. To cover that neon sign?

Q. That is listed separately.

A. That is all in this particular group.

Q. Is the Neon sign included in the \$322.27?

A. No, that is another item.

Q. That is the next one listed? A. Yes.

Q. And the Neon sign item to which you refer, \$500 expenditure on July 10, 1945, from Exhibit 132C, is that right? A. Yes.

Q. And you decided to capitalize that item also?

A. It was capitalized. Whether it was solely my decision or whether based on Mr. Maundrell's testimony or entry in the check stub record or entry in the book, I can't recall at the moment.

Q. But in any event you did capitalize that in preparing Exhibit 165?

A. Yes, that is right.

Q. Now, as to any of these expenditures which you have capitalized [2275] in preparing Exhibit 165, as distinguished from treating them as current expense items, was there uncertainty at all with respect to any of those expenditures in your mind as to how they should be classified?

Mr. Campbell: Objected to as immaterial and incompetent.

The Court: Objection sustained.

Mr. Avakian: Your Honor, I am trying to find out the basis for his classification and trying to determine whether he was convinced as to each item or whether there was some doubt about it.

(Testimony of Ray Weaver.)

The Court: The ruling will stand.

Mr. Golden: As an expert, whether he is certain or not.

The Court: The ruling will stand.

Q. Let me ask you, with respect to this B. & H. Refrigeration Service item, where the checks show it was for monthly service charge as well as installation and you testified that to the extent that the expenditure represented a monthly service charge it should not have been capitalized, was there any question in your mind as to the propriety of capitalizing that portion of the charge in preparing Exhibit 165?

Mr. Campbell: Objected to as incompetent as to his state of mind.

The Court: Objection sustained.

Q. It is true, is it not, Mr. Weaver, that to the extent that you capitalized that portion of the expenditure which represented [2276] the monthly service charge, you increased the closing net worth of the Menlo Club as reflected in Exhibit 165 over what it would have been if you had not capitalized that portion of the charge?

A. I also increased the beginning net worth, so to that extent they are offsetting and have no effect.

Q. Suppose this was an expenditure that was made during the indictment period, it was, was it not?

A. Yes, if you are talking about one year.

Q. And it was during the year 1946, was it not?

A. That is right.

(Testimony of Ray Weaver.)

Q. So that it did not increase the net worth at the beginning of 1946, did it? A. No.

Q. You were wrong in that statement?

A. Right.

Q. It affected the net worth only at the end of December 31, 1946?

A. Do you know what the service charge was?

Q. No, I don't, but to the extent then that you included that portion of the charge in capital assets, you have increased the amount of closing net worth, is that right?

A. Yes, I would be glad to remove it if you claim that.

Q. You are the gentleman that conducted this five-year investigation, Mr. Weaver, not I. As you know I did not even see this check until it was produced in court. [2277]

Mr. Campbell: Just a minute—

The Court: This is not a debating society.

Mr. Avakian: I would be glad to have the witness instructed to that effect.

The Court: Well, let us not have these side matters.

Q. Now, Mr. Weaver, in treating certain of these assets as capital rather than current items in Exhibit 165, can you refer me to the particular statute or regulation which you were applying?

Mr. Campbell: Objected to as incompetent.

The Court: Objection sustained.

Mr. Avakian: Well, now, if your Honor please, I am trying to find out simply the provision of law



(Testimony of Ray Weaver.)

that covers this situation in his mind. I am not asking him for his understanding, what that is, but simply how he——

The Court (Interceding): The ruling will stand.

Mr. Avakian: Your Honor will recall——

The Court (Interceding): The ruling will stand.

Mr. Avakian: Perhaps if you would permit me to be heard you might consider——

The Court (Interceding): The ruling will stand.

Q. I will ask you, Mr. Weaver, if you are familiar with Section 29.23(a)-1 of Regulations 111, issued by the Secretary of the Treasury?

Mr. Campbell: Objected to as [2278] incompetent.

The Court: Objection sustained.

Mr. Golden: Your Honor, may we be heard on that?

The Court: No.

Mr. Golden: May we be heard on it in the absence of the jury?

The Court: No, I am not going to stop now.

Mr. Golden: May I make an offer of proof?

The Court: You may make an offer of proof in the absence of the jury.

Mr. Golden: It is always proper to ask expert witnesses——

The Court (Interceding): I do not want any argument. I have ruled. I do not want any offer of proof made in the presence of the jury.

Mr. Golden: Then may the jury be excused?

(Testimony of Ray Weaver.)

The Court: Yes.

Mr. Golden: We have to say something somehow to get it in the record.

The Court: I realize that.

(Jury and alternate jurors admonished and excused at 10:45.)

(In the absence of the jury.)

(NB 337 PP 3-20.)

11:25 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further [2279]

Cross-Examination

By Mr. Avakian:

Q. Mr. Weaver, in determining to classify as capital assets the various expenditures shown on Exhibit 165 we have been talking about this morning, did you refer to or make use of your knowledge involving any provision of law or of regulations?

Mr. Campbell: Objected to as incompetent.

The Court: Answer the question.

A. Well, I presume I did. It is rather difficult to say exactly what you refer to. I did not refer to any particular book.

Q. Would you like to have me call your atten-

(Testimony of Ray Weaver.)

tion to any particular provisions and ask you whether you considered those?

Mr. Campbell: Object to what he would like Mr. Avakian to do.

The Court: Objection sustained.

Mr. Avakian: I understood the witness wanted something specific.

The Court: I think you understand, but my thought was if there is anything here that is the result of an opinion, any item the result of opinion, you can ask concerning it, but to ask a general question like this, I can't see that we are getting anywhere with that.

Mr. Avakian: All right, I will reframe the question. [2280]

Q. Mr. Weaver, you testified earlier that the matter of deciding to classify certain expenditures as capital rather than current expenses, involved to some extent the exercise of judgment, is that correct? A. Yes.

Q. And in exercising that judgment, is it necessary, in order to exercise the judgment, to refer to any regulations of law or regulations applicable to the matter of capitalizing certain expenditures?

Mr. Campbell: Just a minute—I am going to object because it calls for—

The Court (Interceding): My idea was you might find some specific item here which is obviously a deduction or amounts to an expression of opinion.

Mr. Campbell: Further, your Honor, I wish to

(Testimony of Ray Weaver.)

call attention to another aspect of my objection and that is calling for his conclusion as to what entered into the judgment of others in the determination of these items.

Mr. Avakian: Your Honor, I had referred to the specific matters in question, but let me do that again.

The Court: Very well.

Q. I am referring now specifically, Mr. Weaver, to the various improvements in 1946—

The Court: Pardon me—the response to your statement, the question before. It seems to me you should take a little [2281] broader view of it. Even if some of these, in the opinion of an expert account, it might appear some item listed as capital should not be listed as capital, I think it would then be the duty of the expert, such as Mr. Weaver, to put it in the proper place.

Mr. Avakian: That is right.

Q. I am referring specifically, Mr. Weaver, to the item on Exhibit 165 entitled, "For improvements in 1946, \$2355.16." Now that represents a capitalization of the various expenditures which you testified to, which total that amount, does it not?

A. Yes.

Q. And in capitalizing those expenditures as capital expenses, you did, to some extent at least, exercise your judgment as an expert accountant, did you not?

A. Well, I relied in some cases on the testimony of Mr. Maundrell, in some instances on the en-

(Testimony of Ray Weaver.)

tries in the check stubs, and some instances on the entry in the books. Now you might say I might have used my judgment to the extent that where those appeared to be incorrect, I would change them.

Q. And you did actually take one item, for example, entered on the books as repairs and replacements, and through the exercise of your judgment, you treated that as a capital expenditure, did you not? A. Yes. [2282]

Q. Now, in exercising your judgment, Mr. Weaver, in making the computations with regard to these capital items on Exhibit 165, did you draw to any extent upon your knowledge or understanding of any provision of law?

Mr. Campbell: Just a minute—I object to that as assuming a fact not in evidence in the first place.

The Court: It is going beyond the thought I had. You are referring to the whole sum total of this exhibit.

Mr. Avakian: As to any item in there, your Honor.

The Court: I think the question is too general and I think you should point out the specific item.

Mr. Avakian: All right.

Q. With respect to this three hundred twenty-two dollar expenditure, B. & H. Refrigeration Service, which was entered on the books as repairs and replacements and which you, in the exercise of your judgment, said that you capitalized as a capital asset, did you, in exercising your judgment on that

(Testimony of Ray Weaver.)

particular matter, draw on your knowledge or understanding of the law? By law I am including regulations issued by the Treasury Department and any other form in which the law may be expressed.

Mr. Campbell: Objected to as incompetent.

The Court: Answer the question yes or no.

A. Well, in everything I do in an accounting sense, I can't see how I can avoid drawing on all my best experience and [2283] training. What particular part would come into play at the particular time would be a question very difficult to answer.

Q. Perhaps you did not understand my question. In doing that, did you draw, to any extent, upon your understanding of what the law provides with respect to capitalizing that type of expenditure?

A. If you mean did I refer to any particular provision, no.

Q. Did you draw on your understanding of the law?

Mr. Campbell: Objected to as asked and answered.

The Court: I think so.

Mr. Avakian: He said he did not draw on any particular provision. Now, I am making it broader than that.

Q. Did you draw upon your understanding of the law?

Mr. Campbell: I make the same objection, asked and answered.

The Court: He stated in his determination he

(Testimony of Ray Weaver.)

relied upon training and experience and understanding what the law was.

Mr. Avakian: I do not think he included the latter. If he did, then my question is answered.

Q. Did you draw in part at least on your understanding of the law, Mr. Weaver?

A. I presume I must have. You see the difficulty arises in this respect, that in some instances accounting principles and tax law coincide. In that case where they do, it is difficult to tell which one you are drawing on. Where they do not [2284] coincide, there isn't much difficulty.

Q. I am asking you in respect to this particular \$322.27 expenditure, which was entered on the books as repairs and replacements and which you treated in your Exhibit 165 as a capital expenditure. Now, do you know whether there is any provision of law applicable to that particular—

Mr. Campbell: I am going to object as incompetent and improper cross-examination

The Court: Yes, I suggest that you inquire on what he based his determination.

Mr. Avakian: I have been trying to find whether he based in part on his understanding of the law and I have not got an answer to that. I am trying, by pointing my questions up a little more, to get an answer to that question, which your Honor ruled a moment ago I could ask.

The Court: Of course, I have no right to dictate how to question the witness. Wherever it shows these matters are the result of exercise of judgment

(Testimony of Ray Weaver.)

or opinion, you may ask him on what he bases it. If it develops he bases it on some law, then you may find out what law he bases it on.

Mr. Avakian: I am asking him specifically if he did base in part on his understanding of the law. That can be answered yes or not.

The Court: He may answer. [2285]

Q. Did you, or did you not, Mr. Weaver, base your judgment in that matter to any extent at all upon your understanding of what the law provides with respect to that asset?

A. Well, it was law or my understanding of the category.

Q. Can you refer me to what particular——

The Court: I am going to sustain the objection. That is not the understanding of the result of our conference. I thought you would accept it, but if you do not want to accept it you may not, but my thought was where we had a matter of opinion, an item which is a matter of opinion, you may ask him on what that is based and if it develops in his answer it is based on some provision of law, you may find out what it is.

Mr. Avakian: That is what I was asking him.

The Court: I can't see it that way. Objection sustained.

Mr. Avakian: Your Honor, he has stated——

The Court: I have ruled. I am not going to open it up again.

Mr. Avakian: I was half way in the question



(Testimony of Ray Weaver.)

when your Honor sustained the objection and I have not heard an objection.

Mr. Campbell: I have objected.

The Court: Whatever is in that record will not be answered.

Q. Upon what did you base your judgment, Mr. Weaver, in treating [2286] as a capital expenditure the payment of 322 and some cents to the B. & H. Refrigeration Service, which was entered on the Menlo Club books as a repair and replacement expense? A. Do you have the check number?

Q. I can get it for you.

Mr. Golden: 2465.

A. It is based on notation on the check stub, where it states; "Complete new unit."

Q. Upon what did you base your judgment that an expenditure for a complete new unit should be treated as a capital rather than a current expense?

Mr. Campbell: Objected to as having been asked and answered.

The Court: This question is a little different. Let us have the question.

(Question read.)

The Court: Objection overruled. Let us have the question.

(Question read.)

A. My past experience and training.

Q. Can you refer me to anything more specific than a general statement?

(Testimony of Ray Weaver.)

A. If you mean, did I go to any book and refer to any section of law or any discussion of accounting, no.

Q. What specifically did you base it on? You gave me the [2287] general statement, on your past experience, but can you be more specific? What, in your past experience, was the basis for that judgment?

A. From my past experience and training the acquisition of new assets of this character are capital items.

Q. Somewhere in your past training and experience you formed that opinion and judgment, is that it?      A. Yes, that is right.

Q. Do you know just what in your past experience and training was the basis for that judgment that you formed?

Mr. Campbell: I am going to object——

The Court: Objection sustained.

Mr. Avakian: I am going to ask the Court's indulgence in this respect—Mr. Golden and I are not sure just what you stated we could ask.

The Court: I think it was stated two or three times. I do not like to make any more statements about it. I will just meet the situations as they arise. I will say—wherever it appears in this witness' answer there is an expression of opinion, you may ask what the source of that opinion is, and if he says it is based upon some law, you can ask him what section or what law it is. Where there is an item in an exhibit here which is not merely some

(Testimony of Ray Weaver.)

copy of the record but is the result of [2288] deduction or expression of his opinion, you may ask him what the source of the deduction or opinion was, and if it develops it was a specific question of law or matter of law, you can ask him what law.

Mr. Avakian: To test the scope of his experience and education, may I, without reading anything, hand him a particular document, and ask him whether his knowledge and training and experience, including understanding of that particular section——

Mr. Campbell: There is no point in testing an expert——

The Court: Objection will be sustained. We will take a recess until 1:30.

(Jury and alternate jurors admonished and recess taken at 11:45 a.m.)

January 30, 1952, 1:30 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. WEAVER**

resumed the witness stand on further

**Cross-Examination**

**By Mr. Avakian:**

**Q.** Mr. Weaver, I will hand you Exhibits 165 and 181 for identification. On Exhibit 165 you show an

(Testimony of Ray Weaver.)

item, "Accounts Receivable. Advance for purchase of equipment for Mr. Remmer's office, 50 Mason Street," in amount of \$7,489.76 at the end of 1945 and \$8,600.20 at the end of 1946. Is the detail making up those amounts set forth on your Exhibit 174? [2289]      A. Yes, it is.

Q. So that Exhibit 174 represents simply the detail of that item in 165 and the total on Exhibit 174 is a duplication of the total Exhibit 165, is that correct?

A. It is the same figure, yes, it is not a duplication.

Q. It represents the same items?

A. That is right, yes.

Q. So that in considering the net worth of Mr. Remmer from these exhibits, you would not use that same figure two times, would you?      A. No.

Q. Now, the detail making up those amounts represented by the items set forth in Exhibit 174 is based, in part at least, on the cancelled checks which are indicated by the purported exhibit references in Exhibit 174?      A. Yes, that's right.

Q. Let me refer you to the item on Exhibit 174, designated as "John Hagen, Carpenter work, \$76.46." The reference to that is Exhibit 133M, is it not?

A. Yes, and to Mr. Maundrell's testimony on page 1223.

Q. And the number of that check is 1574, is that correct?

A. I do not have the check numbers on the list.

(Testimony of Ray Weaver.)

Q. Exhibit 133M is check No. 1574?

A. Yes, that's right.

Q. Now, you said that you relied in part on Mr. Maundrell's [2290] testimony at page 1223, and I will read you Mr. Maundrell's testimony in that regard. Mr. Maundrell stated:

"Check No. 1574, John Hagen, \$76.46, was for further office repairs at 50 Mason Street."

Is that the testimony to which you refer?

A. Yes. However, it can't be read out of the context or it will convey the wrong meaning.

Q. Immediately before that he was questioned about checks in the sixty series.

A. I mean the context of these checks to John Hagen and the general construction of the office at 50 Mason that was being done at that time. Now, if he inadvertently used the word "further," I am sure he did not mean it in the sense——

Q. Let us not have your interpretation of Mr. Maundrell's testimony. Let us confine it to what was said rather than your interpretation.

A. I thought you asked me what my conclusion was.

Q. No, I asked you if that was the testimony of Mr. Maundrell to which you refer and I believe you answered that was in part, is that correct?

A. Yes.

Q. I have not asked you any further questions yet. Now, Mr. Weaver, it was your conclusion and judgment that that item of \$76.46, which Mr. Maun-

(Testimony of Ray Weaver.)

drell said was for further office repairs, should be capitalized as cost of the office at 50 Mason [2291] Street rather than being treated as a current deductible expense, is that right?

A. Yes, that's right.

Q. Now, I call your attention to the next item on Exhibit 174, which is designated as Exhibit 133-O, dated 11-28-45, a check to John Hagen, carpenter, in the amount of \$65, with reference to the testimony on page 1223. Do you have Exhibit 133-O before you?

A. What is the check number?

Mr. Campbell: 1576.

Q. I was going to ask you that. You have the check there. The exhibit numbers are on the backs of the checks, Mr. Weaver.

A. Yes, it is 133-O.

Q. I will ask you if the testimony of Mr. Maundrell, on which you rely in part, was this testimony from page 1223:

"Check No. 1576 to John Hagen for \$55.06 was for further office repairs. He worked around there for about three or four weeks."

Is that the testimony?

A. Yes. The fact he worked three or four weeks indicated it was under general construction.

Q. And it was your opinion and conclusion and judgment that that payment of \$65 for further office repairs should be capitalized as capital expense rather than treated as currently deducted expenditure? [2292]

Mr. Campbell: Objected to as incompetent, as-

(Testimony of Ray Weaver.)

suming a fact not in evidence. He stated only in part upon Mr. Maundrell's testimony that he passed the capitalization of that item.

Mr. Avakian: Let me rephrase the question.

Q. It was your conclusion and judgment, Mr. Weaver, that this expenditure of \$55.06, which Mr. Maundrell testified was for further office repairs, should be treated as a capital asset rather than being treated as a current deductible expenditure?

A. The amount you said is not in agreement with the amount I have here.

Q. What is the amount you have there?

A. Are you referring to 133-O now?

Q. What is the check number? A. 1576.

Q. Well, I am reading Mr. Maundrell's testimony, which states that check 1576 to John Hagen for \$55.06 was for further office repairs.

A. The amount is \$65 in the check.

Q. Apparently an error was made in the transcript. The check shows \$65? A. Yes.

Q. And that is what your Exhibit 174 shows?

A. Yes, that's right.

Q. With that change in the amount in my question—do you recall the question now? [2293]

A. No, I do not.

Q. Was it your opinion, judgment and conclusion that that expenditure of \$65 to John Hagen for what Mr. Maundrell described as further office repairs, should be capitalized as a capital asset rather than being treated as a current business expenditure?

(Testimony of Ray Weaver.)

A. I don't recall having any question raised in my mind about it at all.

Q. I simply ask if that was your opinion, judgment and conclusion?

A. Certainly it was my conclusion, yes.

Q. Now, you stated earlier in your cross-examination this morning that major items of repair are sometimes classified by accountants as capital expenditures rather than current deductible expenditures, is that correct? Do I recall your testimony correctly?

A. Yes, that is right.

Q. And would the exercise of judgment as to whether these two expenditures of \$76.46 and \$65.00, which Mr. Maundrell in his testimony described as office repairs, should be capitalized rather than being treated as current repair items, be influenced in part by the decision as to whether those amounts were major or minor amounts, using your word?

A. They are influenced entirely by the fact that they are part of a major expenditure. A major expenditure is not necessarily [2294] one sum. If these were expenditures made apart from the general construction of the office, just for repairs, the size of it alone, since they are very immaterial, would influence me in classifying as expenses, simply made at the time and in connection with general construction, they are part of the major expenditure, so even though they are immaterial in amount, I classified them as capital items.

Q. In other words, if this particular carpenter



(Testimony of Ray Weaver.)

work had been done in these amounts by Mr. Hagen independently of the reconstruction work at the office in general, then you might have classified them as current rather than capital, is that what you are saying?

A. Or if it had been done independently of any other major construction.

Q. You know, do you not, from Mr. Maundrell's testimony, that the reconstruction work was done by a contractor named Fred W. Shell? You may refer to 174 to refresh your recollection.

A. Yes, that was part of the reconstruction.

Q. Mr. Shell had the contract, did he not, to make the new office?

A. Yes. Just what contract, I do not know. Undoubtedly there was more than one contract because there was some electrical work done there.

Q. As far as Mr. Hagen, carpenter work was done, do you know from testimony in this case whether that was a part of the [2295] reconstruction work or whether, as Mr. Maundrell testified, it represented office repairs?

Mr. Campbell: Objected to as argumentative. The testimony in this case will speak for itself.

The Court: Objection sustained.

Q. Did you check with Mr. Shell in connection with this matter?

A. No, I had no reason to question the entries on the records and Mr. Maundrell's testimony.

Q. Did you talk to Mr. Hagen? Will you answer just yes or no?      A. No.

(Testimony of Ray Weaver.)

Q. And is there any testimony as to the nature of Mr. Hagen's work in this case that you relied upon in preparing 174, other than testimony on 1223 which you have designated in Exhibit 174?

A. You are relating only to testimony now, or are you also including exhibits?

Q. You have designated in Exhibit 174 that reference for these items of John Hagen is testimony on page 1223. Now, I am asking you, is there any testimony in this case, other than what is on that page, that you relied upon in making this adjustment?

Mr. Campbell: Objected to as assuming a fact not in evidence, that characterization. Exhibit 174 also refers to [2296] exhibits, also refers to testimony appearing at page 1218. The record shows on the face of 174.

Mr. Avakian: I stand corrected if that is true. My photostat does not show that. I call your attention to the items Hagen and ask you to look at it.

Mr. Campbell: Yes, and the reference 133M and 133-O both refer to testimony at page 1223 and below there is also stated: "Checks referred to above were identified by Mr. Maundrell as being drawn on the account of Harold H. Maundrell or Elmer Remmer at the Crocker First National Bank. (purpose—P. 1218.)

Q. Did you rely on the testimony on page 1218 also then? A. In part.

Q. The statement Mr. Campbell just read, referring to page 1218, appears below all these vari-

(Testimony of Ray Weaver.)

ous items, does it not? A. Yes, that is right.

Q. Now, I am going to hand you page 1218 of the transcript and ask you whether on page 1218 you find any reference to these two checks that were paid to Mr. Hagen?

Mr. Campbell: Objected to—the record speaks for itself.

The Court: I think it does. I think he has already testified in the question you propounded you already read—

Mr. Avakian: Page 1223 was read, not 1218.

The Court: Very well, he may answer the question.

Q. Is there anything there that refers to these two payments [2297] to Mr. Hagen? I am going to object to your looking at another page.

Mr. Campbell: I object—

Mr. Avakian: He is looking at another page. I want him to answer first.

A. I can't understand page 1218 without looking at what precedes because the questioning and answering is continuous, it doesn't break off.

Q. Very well.

A. On page 1217 the question refers to construction of office at 50 Mason Street. Then the questioning continues, going into these other checks—"And as to those improvements upon what record or records of what enterprises was set up?" "A. Well, it was set up principally for Mr. Remmer's private office and also for the office of the Day-Night Cigar and 110 Eddy." Then it continues at

(Testimony of Ray Weaver.)

the bottom of the page going to another check to Mr. Shell in connection with construction work here.

Q. What page are you on now?

A. 1219. Then on page 1221 there is reference to a check to John Hagen and in answer to the question, for what purpose, it says it was for carpenter work—"Carpenter work where? A. At the new office, 50 Mason Street. Q. That was part of the construction cost there? A. Yes, sir." Then it continues on to the other checks. That is why I say you can not read [2298] any one without the context. My reference in those pages did not intend to be so specific. I did not particularly intend to tie down to any one particular page.

Q. I just want to be sure what you are doing is being done soundly and accurately.

A. I hope it is.

Q. You notice on the dates as you have listed them in Exhibit 174 that checks to Shell designated as "Contractor, new office" are August 18, 1945; October 4, 1945, and November 12, 1945?

A. Yes, that is right.

Q. And that October 12, 1945, is the last check to Fred Shell, is it not? A. Yes, that is right.

Q. It is possible, is it not, Mr. Weaver, there might have been some damage at the office and as a result at some later date Mr. Hagen, the carpenter, was called in to make repairs to that?

A. Anything is possible, but not probable.

Q. Without checking with Mr. Hagen or Mr.

(Testimony of Ray Weaver.)

Shell, you wouldn't know that? I believe you said you did not check with either of them.

Mr. Campbell: Objected to as argumentative.

The Court: Objection sustained.

Q. Now, on Exhibit 174 you have listed a check described as Exhibit 135D. I believe it is dated March 31, 1946, United Studios electrical [2299] work, testimony page 1235, in amount of \$79.60. Do you see that item? A. Yes.

Q. Do you have the check before you, 135D?

A. No, these are all in 1945.

Mr. Campbell: Check 1981.

Q. I show you Exhibit 135D, which is the check in question, United Studios, in amount \$79.60. There is nothing on the check itself to indicate the purpose of the expenditures?

A. No. Do you have the check stub?

Mr. Avakian: The check stub shows electrical work 52 Mason Street. You refer to page 1235. Is that the testimony of Mr. Maundrell?

A. I believe so.

Q. The question and answer on that page is:

"Q. I show you plaintiff's Exhibit 135D, check dated March 31, 1946, No. 1981, in the amount of \$79.60, to United Studios, and ask you for what purpose that check was issued?

"A. That was for electric work that was done on the new offices at 50 Mason Street."

Was it on the basis of that testimony that you concluded that expenditure should be capitalized rather than being treated as a current business ex-

(Testimony of Ray Weaver.)

penditure? A. That was part of it, yes. [2300]

Q. You note, do you not, that the date of that check is March 31, 1946, whereas the checks to Shell, the contractor at the new office, were in August, October, and November, of 1945?

A. Yes.

Q. Doesn't that indicate to you that the new office had been completed prior to March 31, 1946?

A. No, very often after construction of an office is completed, you will find you need new electric outlets, something of that nature, not a repair but actual additional cost of the new office.

Q. And in that type of expenditure you have to exercise judgment as to whether it is a major repair? A. Yes.

Q. And if it was a \$5.00 expense of that kind, you wouldn't capitalize it?

A. I wouldn't call that a matter of judgment. That is a matter of whether or not it is worth bothering with.

Q. Whether it is worth bothering with is a matter of opinion and judgment, isn't it?

A. I presume it is.

Q. And did you exercise your judgment in deciding that that particular item should be capitalized?

A. Yes. I did it mainly to keep from being questioned concerning as to why I hadn't capitalized it.

Q. By capitalizing it you have, in effect, increased the [2301] amount of income computed to Mr. Remmer on the net worth?

(Testimony of Ray Weaver.)

A. Yes. I have also increased depreciation.

Q. The depreciation on that would be how much, on that \$79.46?

A. Somewhere in the neighborhood of \$4.00.

Q. So you added 79 dollars and gave us a break to the extent of four dollars, is that right?

A. Well, no matter how you look at it, it would seem immaterial to me.

Q. And is it your opinion and judgment as an accountant, Mr. Weaver, that on items of this kind, which amount to approximately 79 dollars, it is proper accounting to go to all the accounting work that is necessary to set that up in a depreciation account, rather than simply treat it as a current business expenditure?

Mr. Campbell: Objected to as incompetent and misleading. The testimony is this is one of a number of items.

The Court: Objection sustained.

Q. Is it true, Mr. Weaver, that in setting up a particular expenditure as a capital rather than a current expenditure, considerable more bookkeeping work is required in connection with that item than there would be if treated as current expenditure?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Q. Is the amount of work which would be required to capitalize [2302] an expenditure a factor which you, as an expert accountant, would consider in deciding whether a particular item was of sufficient major importance to capitalize?

(Testimony of Ray Weaver.)

Mr. Campbell: Objected to as incompetent.

The Court: You may answer that question.

A. It is one factor that would be considered, yes.

Q. Now, it is true, is it not, Mr. Weaver, that while this particular item and the two Hagen checks are small matters in amount, that in all of these various enterprises, concerning which there has been testimony in this case, the accumulated total of those items might be a very substantial amount?

Mr. Campbell: Objected to as argumentative and incompetent.

The Court: Objection sustained.

Q. You have listened to the entire testimony in this case, have you not?

A. With the exception of one or two days that I missed.

Q. Do you recall whose testimony, while you were away?

Mr. Campbell: Objected to—

The Court: Objection sustained.

Q. With the exception of one or two days you have listened to all the testimony? A. Yes.

Q. From your knowledge of the testimony in this case, is it not true, Mr. Weaver, that the total amount of these various [2303] miscellaneous items which you felt should be capitalized rather than being treated as current expenditures, amounts to a very substantial sum? A. You mean—

Mr. Campbell: I am inclined to let him answer, but I make the objection that it is not competent.

The Court: Objection sustained.



(Testimony of Ray Weaver.)

Mr. Avakian: If the objection was based on the use of the word "substantial," we can have him give the exact amount. I did not want him to go to that trouble, your Honor.

The Court: The ruling will stand.

Q. Now, Mr. Weaver, you have set forth in Exhibit 165 as an asset 100 thousand dollars as the cost of 10-year lease, and then under liabilities you have set up a reserve for depreciation, which I believe you testified represents a pro rata allocation of that 100 thousand dollars over a ten-year period, am I correct in that respect?

A. No, the allocation is under reserve amortization of lease.

Q. I modify that—you set up for reserve for amortization on the 10-year basis, is that right?

A. That is right.

Q. Then in addition you have set up as assets in amount \$48,801.50, the item "Other Assets, Equipment, Licenses, Good Will, etc.," and then you have set up a reserve for depreciation with respect to that item, have you not? [2304] A. Yes.

Q. And can you tell us the life period as used in computing your reserve for depreciation on that item? A. Yes, a period of ten years.

Q. Now, you have included in that figure \$43,801.50, all of the physical assets of the Menlo Club, at the time of acquisition, I take it?

A. And all of the tangible assets and good will.

Q. In other words, that includes good will and also all physical assets?

(Testimony of Ray Weaver.)

Mr. Campbell: Objected to—it doesn't include inventory.

Mr. Avakian: I think I should clear that up.

Q. The inventory is set forth as 31 thousand odd dollars? A. Yes, that is right.

Q. Aside from inventory, you have included in the \$43,800, all of the physical assets, whatever they might have been, of the Menlo Club, Bar and Tiny's Restaurant? A. And all the tangible assets.

Q. Yes, I say you have also included all physical assets, none of the physical assets are left out?

A. Except the inventory.

Q. Now, do you know specifically what those assets were?

A. Well, I know that the physical assets were certainly much less than 31 thousand dollars worth.

Q. I am not talking about the amount. Do you know what they [2305] were—tables, chairs, refrigerators?

A. Represented tables and chairs of the Menlo Club; represented the ordinary restaurant equipment which you find in a restaurant and ordinary bar equipment you find in a bar.

Q. Do you know whether that equipment was new equipment or used equipment on May 1, 1945?

Mr. Campbell: Objected to—whether it was new or used is immaterial.

The Court: Objection sustained.

Mr. Avakian: The question of the life to be used has to depend—

The Court: You may answer the question.

(Testimony of Ray Weaver.)

A. Well, the life use is based on the life on the return.

(Question read.)

Q. Can you answer that question?

A. No, I do not.

Q. Is it not true, Mr. Weaver, that deduction for depreciation should be based on a reasonable estimate of the life of the asset at the time of its acquisition?

Mr. Campbell: Objected to as immaterial in this case, he having stated that the life use here was that used on the return of the taxpayer.

Mr. Avakian: This is an expert witness. He is expected to do what is correct. Now, he has made numerous adjustments where he thought it was incorrect, all against us, I might say. [2306]

The Court: You may answer the question.

Q. Do you recall the question?

A. Not very much.

(Question read.)

A. Yes. Since ten years is used in the return, that certainly was at least a reasonable estimate of its life.

Q. You made no independent analysis of that?

A. No, I presumed if the taxpayer stated it would last ten years, it would last at least that long.

Q. Do you know the particular return you refer to?

A. The returns of the Menlo Club, both original and amended.

(Testimony of Ray Weaver.)

Q. I show you prosecution's Exhibit 91, amended return of the Menlo Club for the year 1946, and I call your attention to schedule D, "Depreciation," and ask you if that is the portion of the return to which you refer?

Mr. Campbell: I object to that. He called for the original return as well as the amended return.

Mr. Avakian: They are all the same, but I will be glad to show him all of them.

Q. I show you prosecution's Exhibit 90, which is original return for 1946, and Schedule D, "Depreciation," is the same on both of those returns, is it not?

A. Yes, and on the original return as well as the amended, under column "Estimated Life Use, Depreciation," is stated ten years. [2307]

Q. And the only amount of depreciation in dollars as on that return is designated as "Furniture and fixtures \$2,000," is that not correct?

A. That is right; so to the taxpayer's advantage I allowed depreciation on the entire amount, \$43,801.50, even though they only claim \$2,000 in the return.

Q. Let us see if you really did that to the taxpayer's advantage. Isn't it a fact that the taxpayer's return amortized that same 43 thousand dollar figure on a five-year amortization basis, and I will hand you prosecution's exhibit 91, which is amended return for 1946, and I call your particular attention to statement included on the part of that return designated "Depreciation 21." Will you read that over——

(Testimony of Ray Weaver.)

Mr. Campbell: Just a minute—I am going to object to the question. He asked for the original return and then he hands him an amended return.

Q. Isn't it true, Mr. Weaver, that Mr. Remmer's individual 1946 return was filed after the Menlo Club filed its amended 1946 return and that Mr. Remmer's individual return showed as his share of Menlo Club income the amount allocated to him from the Menlo Club amended return that is in your hand?

A. You are talking about an entirely different item——

Q. Can you answer that question?

A. You are——

Mr. Avakian: May he answer the [2308] question?

The Court: You have one question propounded to the witness and I don't see how the witness, when a question is propounded and he is asked to look at an exhibit and then confronted with another question before he can answer the original question, I don't see how the witness can really go along.

Mr. Avakian: Mr. Campbell interposed an objection to the first question and I was trying to overcome the objection.

The Court: I don't care what caused it. Ask the witness a question and let him answer.

Mr. Avakian: Let me withdraw the question to which Mr. Campbell objected.

The Court: All right.

Q. Do you remember the question?

(Testimony of Ray Weaver.)

A. No, but you are going into an entirely different subject.

Q. Do you remember the question?

A. No, I do not.

(Question read.)

Mr. Campbell: I object to that. The items speak for themselves.

The Court: He may answer.

(Question read.)

Q. Isn't that true, Mr. Weaver?

A. I don't recall when his individual 1946 return was filed.

Q. I hand you prosecution's Exhibit 5, which is Mr. Remmer's [2309] return for the year 1946. Would that assist you in answering my question?

Mr. Campbell: Is that a new question?

Mr. Avakian: Same question. He didn't recall certain things so I am trying to assist him in recalling them.

(Question read.)

A. Yes, that is right.

Q. Now, Mr. Weaver, getting back to the prior question which I withdrew at the time—it is true, is it not, that the Menlo Club 1946 amended return took an amortization deduction based on five years for an amount of \$143,801.50?

A. Yes, in spite of the fact that the lease specifically states it is for ten years and cost 100 thousand dollars.

(Testimony of Ray Weaver.)

Q. You heard Mr. Maundrell's testimony that when he prepared that statement he was under the impression the lease was for five years?

Mr. Campbell: I submit the record speaks for itself.

Q. That is the fact, that the amended return takes a five-year amortization for the 143 thousand dollar figure?

A. Yes, and it is entirely wrong.

Q. Whether it is right or wrong, what you did in Exhibit 165 was to break that same figure up into two amounts, one of 100 thousand dollars cost of ten-year lease, which you amortized on a 10-year basis, and the other \$43,801.50, which you classed as other assets and depreciated on the ten-year basis, isn't that true? [2310]

A. That's the way the agreements read.

Q. Isn't that what you did? A. Yes.

Q. Very well. Now, the use of a ten-year life, as distinguished from a five-year life, means that you cut in half the amount of actual depreciation allowed the taxpayer, isn't that true?

A. That is true as far as it goes, but——

Mr. Avakian: Just a minute——

Mr. Campbell: He is entitled to explain.

The Court: Let him explain.

A. Included in this 43 thousand are his tangible assets, to which no depreciation credit should be allowed for any purpose. We have permitted it to remain in there to avoid any argument.

Q. But the fact is that the effect of your adjudgment, as compared with the Menlo Club 1946 re-

(Testimony of Ray Weaver.)

turn, is that you have reduced the annual deduction by approximately 14 thousand dollars a year, isn't that right?

A. The depreciation of physical assets was allowed as claimed, except that we also permitted a deduction on intangible assets, to which actually they wouldn't be entitled under the law.

Mr. Avakian: May he answer my question?

Mr. Campbell: Let him finish.

Mr. Avakian: It can be answered yes or no.

(Question read.)

The Court: Can you answer yes or no? [2311]

A. Which return do you refer to?

Q. Comparing your exhibit 165 with the Menlo Club 1946 return? A. Yes, that is right.

Q. The answer is yes. That is what you had in mind when you said you did Mr. Remmer a favor?

Mr. Campbell: That is objected to.

The Court: Sustained.

Mr. Avakian: He said he did him a favor.

Mr. Campbell: I object—I ask that go out.

The Court: That may go out. This is not the time to argue.

Mr. Avakian: But your Honor permitted—

The Court: Just a minute—let us not have any difficulties now.

Q. Do you still have before you the 1946 Menlo Club amended return? A. Yes.

Q. And would you refer to the typewritten statement which is attached to it, which Mr. Maundrell



(Testimony of Ray Weaver.)

testified he prepared, regarding the amortization of 143 thousand dollars?      A. Yes.

Q. May I have that please? I am going to read to you that statement, Mr. Weaver: (Reads Exhibit 91). Had you read that statement prior to the commencement of this trial, Mr. Weaver?

A. Yes. [2312]

Q. Now, Mr. Weaver, it is a fact, is it not, that in 1948, approximately three years after this club was purchased by Mr. Remmer and his associates, the District Attorney's office in San Francisco, through a new interpretation of an old ordinance, took action——

Mr. Campbell: I object at this point.

Mr. Avakian: May I state the question?

Mr. Campbell: As being incompetent, if the Court please, as to any action taken in 1948 by the District Attorney's office. He has gotten to the point of interpretation of an old ordinance relating to the club.

The Court: I can't see what it has to do with the return filed in 1946.

Mr. Avakian: Because it has bearing on the estimate of the life——

The Court (Interceding): Objection sustained.

Mr. Avakian: Before the question is stated, your Honor?

The Court: Yes.

Mr. Avakian: In view of the fact that your Honor will not permit me to state the question, I

(Testimony of Ray Weaver.)

will make an offer of proof. I will defer it to the recess. I would like that opportunity, since I can not ask the question. May I have that opportunity during the recess?

The Court: Yes, we will excuse the jury at any time.

Mr. Avakian: I suggest that we do it at the next recess. [2313]

The Court: No, we will not do it at any recess.

Mr. Avakian: I mean at the begining or end of the recess.

The Court: Very well.

Q. Now, Mr. Weaver, it is a fact, is it not, that proper accounting practice calls for amortization of an intangible asset acquired from capital outlay for a limited period of time, the length of which is based upon a reasonable estimate?

Mr. Campbell: Objected to as incompetent.

(Question read.)

The Court: Answer the question.

Mr. Campbell: I suggest further that the question does not contain sufficient elements.

The Court: Well, he may answer the question.

A. I do not understand exactly what you mean.

Q. Well, are you familiar with the provisions of the Internal Revenue Code and Treasury regulations providing for such deduction of intangible assets?

Mr. Campbell: Objected to as incompetent and immaterial.

(Testimony of Ray Weaver.)

Mr. Avakian: An expert witness, your Honor.

Mr. Campbell: And has no bearing on any questions here.

The Court: You may answer the question.

A. You mean deduction of intangible? [2314]

(Question read.)

Mr. Campbell: I submit the question is incompetent.

The Court: What do you mean when you say "such"?

Mr. Avakian: Stated in the prior question.

Mr. Campbell: The prior question the witness said he didn't understand.

Mr. Avakian: I didn't hear the witness say he couldn't understand.

The Court: I heard him.

Mr. Avakian: This last question?

The Court: The one before.

Mr. Avakian: I will reframe it.

Q. Are you familiar with the provisions of the internal Revenue Code and the Treasury regulations, providing for depreciation of intangible assets acquired through capital outlay, where the value of the business in the production of income is for a limited period of time?

Mr. Campbell: Objected to as incompetent and immaterial. Assuming facts not in evidence.

The Court: Answer the question.

A. Generally speaking there is no deduction provided for intangible assets such as, for example,

(Testimony of Ray Weaver.)

good will. Now there are certain intangible assets, such as a leasehold, for which a deduction is provided over the life of the lease. However, in this case the life of the lease was falsely stated [2315] in the return to be five years.

Mr. Avakian: I ask that the characterization here, "falsely stated" be stricken.

The Court: It may go out.

Q. Do you understand my question? Can you give me a direct answer to it?

Mr. Campbell: I submit he has given a direct answer.

The Court: Do you want to frame another question if you are not satisfied with that answer?

Mr. Avakian: I will frame another question.

Q. Mr. Weaver, if you do not understand my question, I would appreciate your saying so and I will be glad to reframe it. If you do, please give me a direct answer and then you will be permitted to offer any explanation.

Mr. Campbell: I do not believe that characterization is called for.

The Court: Let us go along.

Q. Now, Mr. Weaver, are you familiar with the provisions of the Internal Revenue Code and the Treasury regulations, which provide for a deduction for intangible assets acquired through capital outlay, where the value of the intangible asset in the business or in the production of income is for only a limited period of time?

Mr. Campbell: Again I object. Assumes a fact

(Testimony of Ray Weaver.)

not in evidence, that there is such a general statement. [2316]

The Court: I think he stated there wasn't any provision.

Q. Is that your answer there is no such provision?

(Question read.)

The Court: Strike out the reference to falsely stated.

Q. Can you give me a direct answer to my question?

Mr. Campbell: I submit he has given it.

The Court: Objection sustained.

Q. Are you familiar with Section 29.23(L)-1 of Treasury regulations 111, entitled "Depreciation of intangible assets"?

Mr. Campbell: Objected to as incompetent.

The Court: Objection sustained.

Mr. Avakian: Your Honor, we feel in cross-examining an expert we are entitled to test his knowledge of pertinent provisions of regulations that are applicable to what he did. The purpose of the question was first to find out——

The Court: Show it to him.

Mr. Avakian: Very good.

Mr. Campbell: I submit if that is for the purpose of testing general qualifications as an expert, there is some limitation which we finally reach, after voir dire of the witness, after extensive cross-examination as to background and qualifications, we must reach a point some place where general questions can not be asked for that purpose.

(Testimony of Ray Weaver.)

The Court: I hope we will, but you may show him the provision. [2317]

Q. That is the section I described which I now hand you.

(Question read.)

Mr. Campbell: The question is, is he familiar with it?

Mr. Avakian: Yes. You can answer yes or no.

A. I am sure I have seen the section before, yes.

Q. You are sure you have. Do you wish then to correct your prior answer, generally speaking there is no provision for depreciation of intangible property?

A. That was not my testimony.

Mr. Avakian: May we have it read?

The Court: That was not his testimony.

Mr. Avakian: He said generally speaking there was no provision for intangible—

The Court: That is just a portion of it. Read the answer.

(Answer read.)

Q. Do you wish to change that after looking at this regulation?

A. That section does not apply. This is a particular provision for leaseholds.

Q. I am not asking about leaseholds.

A. Well, this is a leasehold.

Q. I am asking whether you wish to change anything in respect to your answer?

Mr. Campbell: I submit that has been answered. [2318]

(Testimony of Ray Weaver.)

The Court: You may answer this yes or no.

Q. I am asking if he wishes to change it?

A. No.

Q. In preparing Exhibit 165 and in exercising your judgment on the various adjustments that you made in preparing that exhibit, did you rely to any extent on Section 29.23(L)-3, Treasury Regulations 111?

A. Is that the one I was just looking at?

Q. Yes.

A. I don't believe so, because that does not apply here.

Q. You did not consider it applicable?

A. It is not applicable. It applies to return.

Q. And you did not use that section?

A. I can't say I used any particular section. I know from past experience that leasehold is amortized over the life of the lease. If you want me to go to all the facts, the particular section, I will be glad to do so, but I don't know it off-hand.

Q. All I am asking you, after you have read this section, did this particular section enter into the use of your judgment in preparing Exhibit 165? That is all I am asking.

Mr. Campbell: Objected to as asked and answered. He stated what he took into consideration.

The Court: Objection sustained.

Mr. Avakian: I will stipulate it has been asked, your [2319] Honor. I submit it has not been answered.

(Testimony of Ray Weaver.)

The Court: Well, I feel differently; it has been answered.

Q. Mr. Weaver, I show you Exhibit 125C, which is last sheet in the asset section of the Menlo Club ledger for 1947, and is entitled, "Tiny's Restaurant, Menlo Bar, Menlo Club, Furniture, Fixtures, Equipment and Lease," and I also hand you prosecution's Exhibit 140, which is a photostat of a page entitled "Furniture, Fixtures, Equipment and Buildings." You are familiar with those two sheets, are you not? A. Yes.

Q. You recall, do you not, that Exhibit 140 was photostat produced here by the prosecution?

A. Yes.

Q. And do you know whether you, or any members of your staff, arranged for the preparation of this photostat? A. I believe I did.

Q. Do you recall when you did that?

A. No. It was after the Menlo Club records were originally delivered to us.

Q. Where did you have that photostat done?

A. I believe it was in our own office.

Q. Do you have a photostat machine in your office in San Francisco? A. Yes. [2320]

Q. Did you personally make the photostat?

A. No.

Q. Do you know who made it? Do you have a recollection?

A. I suppose whoever was employed as photostat operator at the time.

Q. Do you know where the original sheet from which this photostat was made now is?



(Testimony of Ray Weaver.)

A. No, I do not.

Q. Did you personally handle that sheet in connection with the preparation of this photostat?

A. Yes.

Q. You specifically recall that, do you?

A. Yes.

Q. And did you take it out of some book at that time?

A. Yes, for the purpose of photostating.

Q. And you personally took it out of the book, is that right? You didn't have some other person, but you did it yourself?

A. I believe I did it myself.

Q. Do you know which book that was?

A. I believe it was in the Menlo Club book for 1945.

Q. Is that in evidence here?

A. I would have to look over the list of exhibits.

Mr. Avakian: Well, we will look for it ourselves. I thought you might know.

The Court: We will take a recess now. [2321]

Mr. Golden: Would your Honor take up this matter now?

The Court: No, not before recess.

Mr. Golden: After the recess, before the jury is called in?

The Court: Very well.

(Jury and alternate jurors admonished and recess taken at 2:45 p.m.)

3:00 P.M.

(Defendant present with counsel.)

(In the absence of the jury.)

(NB 337—PP 53-56.)

3:10 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate juror stipulated.)

MR. WEAVER

resumed the witness stand on further

Cross-Examination

By Mr. Avakian:

Q. I show you prosecution's Exhibit 128, which is entitled, "Tiny's Restaurant and Menlo Bar, 1945," and I will ask you, Mr. Weaver, if this is the book from which you believe you extracted the original of Exhibit 140?

A. Yes, I believe it is. It may have been in a regular binder at the time rather than paper cover.

Q. Do you have any recollection now on that?

A. I believe it was.

Q. You say you believe the sheets that comprise this exhibit [2322] were bound in a stiff binder cover rather than the manila covers that are now on?

A. Yes.

Q. Can you tell us where your photostat machine is with respect to your own personal office in San Francisco?

(Testimony of Ray Weaver.)

A. It is on the floor just below.

Q. On the floor below you?

A. That is right.

Q. Was Exhibit 128 in your own office at the time you extracted the sheet which you had photostated? A. What is the date?

Q. That is 1945, Tiny's Restaurant and Menlo Bar book I just showed you. A. Yes.

Q. And then you personally took that sheet down to the photostat room?

A. I may have taken it down personally.

Q. Do you have a messenger service available there?

A. It is available. I do not always use it.

Q. You have incoming and outgoing boxes?

A. Yes.

Q. Did you at times use messenger service for sending anything to be photostated? A. Yes.

Q. Did things come back to you from the photostat room by [2323] messenger service also?

A. Yes.

Q. Do you recall in this particular instance whether Exhibit 140 was sent back up by messenger service? A. I don't know how it came up.

Q. You do not recall whether you personally picked it up or not? A. No, that is right.

Q. Do you know whether the original of Exhibit 140 was returned to you after after the photostat was made? A. Yes.

Q. You know that definitely?

(Testimony of Ray Weaver.)

A. I always check every photostat with the original.

Q. Do you make any record of documents that are photostated?

A. I do not know whether we did at that time. We do now.

Q. You say that you always checked. Do you have a specific recollection of checking Exhibit 140 against the original, or are you just simply stating general practice?

A. It is my recollection because I was very much interested in that particular document.

Q. And then do you recall what you did with the original of Exhibit 140 after it came back?

A. Yes, I returned it to the book from which I had taken it.

Q. And you personally inserted it in the book?

A. Yes. [2324]

Q. Is there any way in which you can determine the approximate time of that, Mr. Weaver?

A. I do not know.

Q. Can you tell us who keeps whatever records are kept of photostats that are taken?

A. Usually the group leader keeps them for a certain length of time, just how long I do not know. It is more an administrative procedure.

Q. By group leader you mean your own section chief? A. Yes.

Q. The photostat department themselves do not maintain a record?

A. They may also maintain a record.

(Testimony of Ray Weaver.)

Q. Have you searched in both of those places to determine whether there was any record that would indicate to you approximately when the original Exhibit 140 was returned to you?

A. No, I had no particular interest in knowing the date.

Q. Are you able to tell us the year it was returned to you? A. Either 1947 or 1948.

Q. When did you last see the original Exhibit 140, so far as you can recall now?

A. As far as I can recall now, I last saw it when I reinserted in the ledger from which I took it.

Q. And that would have been in 1947 or 1948?

A. That is right. [2325]

Q. You do not recall seeing it after that time?

A. No, sir.

Q. Was Exhibit 128 in any one's possession besides yourself personally during the years 1947 and 1948?

A. No one that would have removed any papers.

Q. That was not my question. Can you answer my question?

A. All of these records, for the purpose of keeping them from becoming mixed with others, were placed in a separate room on the floor below my own office and generally when I would work on the records I went down to the room and worked there, or if I was only going to work on one particular book, I might take the book up to my own office.

Q. When you removed the original of Exhibit

(Testimony of Ray Weaver.)

140 to have the photostat, was Exhibit 128 at that time in your own office or in this room on the floor below?

Mr. Campbell: I submit that is immaterial.

The Court: You may answer the question.

A. I believe I took it to my own office, but my office has been moved several times since then and I can not remember just what floor it was on.

Q. In any event, you took it from this special room and to your own office, wherever it may have been?

A. Yes.

Q. That is your best recollection?

A. Yes. [2326]

Q. At the time you got the original of Exhibit 140 from the photostat room and inserted it, as you said, in Exhibit 128, was that in your own office or in the special room where these records were being kept?

A. I believe it was still in my own office and then returned to the other room.

Q. Will you answer now then my question as to whether, during 1947 and 1948, any one other than yourself had custody or possession of Exhibit 128?

A. Whenever any records were requested by either Mr. Maundrell or Mr. Kyne, we would give them whatever they desired. Whether this record was ever returned to them under those circumstances, I do not recall, but that would be the only occasion when it would be out of my custody.

(Testimony of Ray Weaver.)

Q. Did any other agent work with this Exhibit No. 128 during 1947 and 1948?

A. Yes. However——

Q. Would you give me the names of the agents?

A. Messrs. Morgan and Harkness.

Q. Did they ever take the book out of that special room, so far as you know, when working?

A. So far as I know, they never removed any of the records out of there unless they wanted to bring something up to my office just for a moment for the purpose of discussion.

Q. Was it in this same special room that you kept the B. & R. [2327] Smoke Shoppe 1944 dairy, which early testimony states was lost in the Bureau?

A. Yes, I believe it was.

Q. And it was in that special room being kept there at the time it became lost, is that right?

A. What books?

Q. 1944 B. & R. Smoke Shoppe diary that was lost.

A. I don't say it was lost there.

Q. Where was it being kept at the time, according to the testimony of agents who testified here, it became lost in the Bureau?

A. No, that was not the testimony. It might also have been returned at a request and then not subsequently returned to the Bureau.

Q. You recall the testimony of Mr. Morgan and Mr. Harkness and yourself that the last seen of that book was in the Bureau of Internal Revenue?

(Testimony of Ray Weaver.)

A. That is true. That doesn't mean that it was lost there.

Q. Was it in that particular room, though, that it was being kept? A. Yes.

Q. Was that special room also the room in which you kept the memorandum of the conference with Mr. Thatcher which you stated you have lost?

Mr. Campbell: Objected to as assuming a fact not in evidence. [2328] He did not say the conference memorandum was lost.

Mr. Avakian: Can not be found is lost? He said he searched and couldn't find it. Isn't that lost?

The Court: Let us have the question.

(Question read.)

A. No, I did not keep that in the same place.

Q. That was kept in a different room?

A. I kept that in my own office.

Q. Which is the place which you said you received at the time the original of 140 from the photostat room? A. That is right.

Q. Now, your last recollection of seeing the original of Exhibit 140 is when you inserted it in No. 128, am I correct in that?

A. I believe that is right, yes.

Q. Now, I believe you testified that on or about July 11, 1949, you turned certain records of the Menlo Club over to Mr. Semenza, do you recall that? A. Yes.

Q. Was Exhibit 128 one of the documents which you turned over to him at that time?



(Testimony of Ray Weaver.)

A. I think it was. If it appears on the list which is in evidence.

Q. I will hand you Exhibit 70, which is the receipt prepared by Mr. Semenza of records given to him on July 11, 1949. Does that refresh your recollection? [2329]

A. Is that marked 1945?

Q. Tiny's Restaurant and Menlo Bar, 1945.

A. Yes, that was included in these records.

Q. Do you know whether or not the original of Exhibit 140 was contained in Exhibit 128 at the time you turned it over to Mr. Semenza on July 11, 1949?

A. I believe it was.

Q. Do you have any recollection of it?

A. No, because as I stated previously, whenever any of these records would be requested, we would return them and if they were again returned to us later, I would not go through to check every sheet to see if some sheets were not there.

Q. Let me find out just exactly what your testimony on that is. Do you have any specific recollection of seeing the original of Exhibit 140 contained in Exhibit 128 at the time you turned it over to Mr. Semenza?

A. No, I didn't go through the pages at that time.

Q. When you say you believe it was, do you mean simply that the last time you saw the original of Exhibit 140 it was contained in Exhibit 128 and you have no knowledge of ever having been taken out?

(Testimony of Ray Weaver.)

A. I mean I replaced it in the book from which I took it and that thereafter no one had any occasion to remove any pages from any of the books, unless it was done when the books were out of our possession. That I can't testify to, [2330] of course.

Q. You don't know whether it was ever out for the reasons you stated, is that a fair statement?

A. I believe it was.

Q. Do you know whether you or anybody else in the Bureau of Internal Revenue could have lost the original of Exhibit 140?

A. I think it was not impossible, but very improbable.

Q. It would not be impossible but very improbable?

A. Yes; in fact, I would say here it was not lost; it was in the book at some time when it was turned over to some one else.

Q. Are you as sure of that statement as you were of your statement yesterday that your memorandum of your conference with Mr. Thatcher was upstairs on the third floor of this building?

Mr. Campbell: Objected to as argumentative.

The Court: Objection sustained.

Q. In any event, the last specific recollection you have of the original of that sheet is the occasion on which, after having it photostated, you inserted it back in Exhibit 128, your last specific recollection?

A. Actually looking at the sheet, yes.

Q. Now, you also testified on direct examination

(Testimony of Ray Weaver.)

with regard to prosecution's Exhibit 125C. Do you recall testifying in regard to that exhibit?

A. Yes. [2331]

Q. When is your first recollection of having seen that sheet?

A. The first recollection of seeing this is at the time I looked through these records after they were deposited in the clerk's office here.

Q. Exhibit 125C, to clarify the record, is contained in bound volume which is designated Exhibit 125, is it not? A. Yes.

Q. And that is a ledger of the Menlo Club for the year 1947? That is the title, is that right?

A. That is right.

Q. And that likewise is a book which you turned over to Mr. Semenza on July 11, 1949, is it not?

A. Yes, that is right.

Q. Do you know approximately when representatives of the Bureau of Internal Revenue first obtained possession of the book that is in evidence, Exhibit 125? A. No, I do not.

Q. Do you know which particular agent obtained it?

A. No, I am not sure of that, either.

Q. Do you know which agent was working on the affairs of the Menlo Club during the course of your investigation?

Mr. Campbell: Course of his investigation?

Mr. Avakian: Course of investigation in which he was Menlo captain. [2332]

Mr. Campbell: I suggest the question, if the

(Testimony of Ray Weaver.)

Court please, is misleading, in that he first asks as to the book which came into possession, he has testified, prior to his coming into the case. Now he asks what agents were working on the case while he was in it.

Mr. Avakian: There is nothing misleading about it.

The Court: What is your question, Mr. Avakian?

(Question read.)

Mr. Campbell: We submit it has been asked and answered.

The Court: Well, he may answer the question.

A. Mr. Morgan, Mr. Harkness and myself.

Q. Do you know whether Mr. Morgan or Mr. Harkness had custody or possession of that book at any time?

A. Well, if they worked on it, they had possession of it during that time, but all the records were in my general custody.

Q. Did they work on it?

A. Yes, they worked in this separate room.

Q. Were these records kept in that separate room continuously from the time you came into the case until you returned them over to Mr. Semenza?

A. Yes, except for occasions when they might be taken out for purposes of discussion.

Q. Did you at any time personally go through Exhibit 125 page by page?

A. Yes, at some time or other I did. [2333]

(Testimony of Ray Weaver.)

Q. Do you know when? A. No, I do not.

Q. Did you do it all at one time or in piece-meal?

A. It would have been done all at one time.

Q. Did you make any notation or summary of pages that were contained in the book at any time?

A. No.

Q. Can you, without looking at that book, now tell me every page that is in it?

Mr. Campbell: Oh, that is objected to as argumentative.

The Court: Objection sustained.

Mr. Avakian: Well, your Honor, the question has been raised here as to whether—

The Court (Interceding): This ruling is going to stand.

Mr. Avakian: Well, I want to test the accuracy of his knowledge, your Honor.

The Court: It is ruled.

Q. When you say that you never saw the page that is designated Exhibit 125C until after it was deposited with the clerk during the course of this trial, do you mean that you have a specific recollection of every page that was in that book when you saw it? A. Well, I mean—

Mr. Campbell: Objected to as argumentative.

The Court: Objection sustained. [2334].

Q. Do you have a recollection that that page was not in that book, or do you simply not have a

(Testimony of Ray Weaver.)

recollection as to whether you did see it there or not?

Mr. Campbell: Objected to as argumentative.

The Court: You may answer the question.

A. What I mean is this—when this Menlo Club record first came into our possession, I was very much interested in any account of that character which reflected the liability to Mr. Schriber for the purchase of the Menlo Club, and that is the reason I had photostats made of the exhibits you have before you. Now, I went all through every sheet of every book of the Menlo Club partnership at that time and the one you have before you now was not there because if it had been, I would have had it photostated. Now, when that came there, I do not know, but as I said before, upon occasion these records would be requested by either Mr. Kyne or Mr. Maundrell and would be returned and when they would again return to us I would not on each occasion go through every book and look at every page to see if any changes had been made.

Q. Do you recall when it was that you were particularly interested in the matter of the amount of liability to Mr. Schriber? Can you give us the approximate date of that?

A. Well, I was interested in it all during the investigation.

Q. Well, you said you had some particular concern and went through the book page by page. I am trying to fix the [2335] approximate time of that.

A. I can't place the time.

(Testimony of Ray Weaver.)

Q. You feel sure that the page designated 125C was not in Exhibit 125 at whatever time it was that you went through the book page by page, is that correct? Are you quite sure of that?

A 125C—I am not sure of the number.

Mr. Campbell: May he see the exhibit. It is hard to recall simply the exhibit number.

A. I am sure that at the time I went through the Menlo records, page by page, 125C was not there and 140 was there.

Q. Was where?

A. In the Menlo Club records.

Q. That wouldn't be 125, would it? That would be 128? A. No, I went through all the records.

Q. Now, do you know approximately how long prior to your turnover of the records to Mr. Semenza on July 11, 1949, it was that you made the page by page examination of the books that you just mentioned? What is your best recollection on that?

A. Well, I would say probably would be some time within the year, more or less.

Q. At the time that you turned the volume, designated in evidence here as 125C, to Mr. Semenza on July 11, 1949, can you state definitely that the page which is designated 125C was not in that book? [2336]

Mr. Campbell: Objected to as asked and answered, two or three times, if the Court please. He stated that he did not go through the records, that he had never seen that page, the other page was in

(Testimony of Ray Weaver.)

there, that he inserted it, he had not looked again at the records.

The Court: Objection sustained.

Mr. Avakian: Will Mr. Campbell stipulate that is his testimony?

Mr. Campbell: I will let the record speak for itself.

The Court: All right, answer the question.

Q. Do you recall the question?

A. Not exactly.

(Question read.)

A. No, because the records may have been returned to the Menlo Club after having been originally received from them and I did not check each page every time they were returned and redeposited with us.

Q. It is quite possible then that at some time after you made your page by page examination, the book may have been returned temporarily to Mr. Maundrell and at that time he may have rewritten that page, as he testified he did, and inserted the new page in the book when he returned it to you?

Mr. Campbell: Objected to as argumentative.

The Court: Objection sustained.

Q. There was a time interval in there in which something like that [2337] might happen?

Mr. Campbell: Objected to as argumentative.

The Court: Objection sustained.

Q. Do you know whether the Menlo Club books were returned to Mr. Maundrell or Mr. Kyne at any



(Testimony of Ray Weaver.)

time during the period from the occasion on which you made your page by page analysis to the date July 11, 1949, when it was turned over to Mr. Semenza?

A. I have no definite recollection that they were, but if they were requested at any time, I certainly would have returned them.

Q. Do you have any recollection they were not returned?

A. No, I have no recollection of these particular records.

Q. Were you present during Mr. Maundrell's testimony that the entries on Exhibit 140 did not represent the true facts and that he had his secretary prepare Exhibit 125C for the purpose of setting forth the correct facts as he knew them?

Mr. Campbell: Objected to as argumentative. The record will speak for itself, as to what his testimony was. It is immaterial whether this man was present or not when Mr. Maundrell testified.

The Court: It may be some preliminary question. Answer the question.

A. I was present most of the time when Mr. Maundrell testified. I don't recall precisely what his testimony was. His testimony was very lengthy. I have not reviewed it. [2338]

Q. Have you reviewed that testimony?

A. No.

Q. You do not recall what he said?

A. I said I was present most of the time. As

(Testimony of Ray Weaver.)

stated before, I missed two or three times. As to the time he was testifying, I do not recall.

Q. You say you were particularly interested during the course of your investigation as to the amount of liability of Mr. Schriber. Do you note on Exhibit 140, the photostat, the last entry made of payment to Mr. Schriber is dated February 28, 1946? A. Yes.

Q. Were you present in this court room when Mr. Maundrell and Mr. Schriber each testified that during 1946 there was a payment of 25 thousand dollars made on May 1st?

Mr. Campbell: Objected to on the same grounds.

The Court: Objection sustained.

Q. You have seen the check which represents that payment in evidence here, have you not?

Mr. Campbell: Objected to—he refers to the question on which objection was sustained.

The Court: Objection sustained.

Mr. Avakian: I will get the check—rather than take the time of going through these now, I will get at this another way. [2339]

Q. I show you Exhibit 125C. That contains an entry, does it not, of a payment to Gene Schriber on May 1, 1946, in the sum of 25 thousand dollars?

A. It contains a credit to the account. The account itself does not state whether it is a payment or not or how it was paid.

Q. The account shows, does it not, that 25 thousand dollars represents a reduction in that amount of the balance due? A. Yes, that is right.

(Testimony of Ray Weaver.)

Q. And does that indicate to you, as an accountant, that there was a payment to Mr. Schriber in that amount, according to that entry?

A. Probably so, but only because I know some of the facts, not just from that.

Q. On Exhibit 125C there is also payment shown to Mr. Schriber in amount of 25 thousand dollars on May 1, 1947, is there not?

A. There is a credit to the account on that date, yes.

Q. Which reduces the balance due to Mr. Schriber? A. Yes.

Q. And that indicates payment to Mr. Schriber, does it not?

A. Well, normally it would. There are other reasons why credits could be made to the account.

Q. This is account of the payments to Mr. Schriber on account of 175 thousand dollars purchase price of the Menlo Club? [2340]

A. Yes. I have not seen checks for all of these credits.

Q. Now, calling your attention, Mr. Weaver, to the fact that payments or credits, as you call them, on May 1, 1946, and May 1, 1947, are noted in Exhibit 125C but are not entered in Exhibit 140, does that not indicate to you, as an accountant, that the change from the use of Exhibit 140 to the use of Exhibit 125C was made by Mr. Maundrell at some time after February 28, 1946, and prior to May 1, 1946? A. Not necessarily, no.

Q. If Mr. Maundrell had still been using the

(Testimony of Ray Weaver.)

original of Exhibit 140 at the time of the 25 thousand dollar credit to Mr. Schriber's account on May 1, 1946, would it not have been normal and proper accounting procedure to have entered the amount of that 25 thousand dollar credit on the original Exhibit 140?

Mr. Campbell: Objected to as argumentative and calling for conclusion as to what Mr. Maundrell would do.

The Court: Objection sustained.

Q. Now, Mr. Weaver, from your examination of Exhibit 140, the photostat, and Exhibit 125C, although you state some of the particular entries are different, both sheets relate to the same transaction?

A. Yes, they relate to the purchase of the Menlo Club from Mr. Schriber.

Q. Now, on Exhibit 140, the photostat, the cost of equipment [2341] and inventory is listed at 75 thousand dollars, is it not?

A. Yes, that is right.

Q. And the cost of lease on that same exhibit is entered as 100 thousand dollars, is it not?

A. Yes, the lease cost was originally entered correctly.

Mr. Avakian: May we have that stricken as volunteer remark, whether it is correct or not?

The Court: Read the question and answer.

(Question and answer read.)

The Court: It may go out except the first part.

(Testimony of Ray Weaver.)

Q. And the total of those two is 175 thousand dollars, is it not? A. Yes.

Q. On Exhibit 125C the same total of \$175,000 is shown, is it not? A. Yes.

Q. But the allocation of the cost of lease and cost of equipment and inventory is made in different amounts from Exhibit 140, is that correct?

A. Yes, quite different.

Q. I will show you prosecution's Exhibit 91, which is the Menlo Club partnership return of income, designated amended return, and the filing date, that is, the Collector of Internal Revenue's receiving stamp is May 15, 1947, is that correct?

A. Yes, that's right. [2342]

Q. And that return contains in it a statement which allocates the 175 thousand dollar cost on the basis of \$31,985.50 to merchandise and certain fixtures, is that correct?

A. Did you say \$31,985.50?

Q. Yes. A. Yes.

Q. Now, except for the transposition of two numbers, that is exactly the same, is it not, as the amount set forth in Exhibit 125C, cost of equipment and inventory, \$31,895.50?

A. Yes, on the record is \$31,895.50.

Q. And on the return \$31,985.50? A. Yes.

Q. In this amended return, which was filed May 15, 1947, the balance of 175 thousand dollars is designated as capital investment in amount of \$143,801.50, isn't that correct?

A. Yes, that is what it shows here.

(Testimony of Ray Weaver.)

Q. So the figure on that return filed in May, 1947, is exactly the same as the figure, cost of lease, on Exhibit 125C, namely, \$143,801.50, is that correct?

A. That is correct, both the same amount.

Q. So that the allocation of 175 thousand dollars in Exhibit 25C is made in the same way as the allocation made in the amended return filed May 15, 1947, except for the transposition of those two figures, isn't that correct?

A. That's right. [2343]

Q. During the course of your examination did you at any time discuss with Mr. Maundrell the matter of the original of Exhibit 140 being different as to the allocation of 175 thousand dollars from the allocation made in the amended return filed on May 15, 1947?

Mr. Campbell: Objected to as immaterial as to any conversation.

The Court: He may answer the question.

A. I don't believe I would have because that would be considered of a possible fraudulent nature.

Mr. Avakian: May we have that statement after the answer to the question stricken as volunteer statement? I asked him if he did discuss it with Mr. Maundrell and he said he did not believe he would have and then a volunteer statement. May we have that stricken?

The Court: I think it is an explanation.

Mr. Avakian: Well, very well, if you want to give an explanation, let us go into it then.

(Testimony of Ray Weaver.)

Q. If you think a particular matter might be a fraudulent matter, then you don't discuss it with taxpayer's representatives?

Mr. Campbell: Objected to as incompetent and immaterial.

Mr. Avakian: That is his explanation.

The Court: Objection sustained.

Mr. Avakian: Your Honor, may I not inquire as to explanation [2344] that he volunteered? You have permitted him to volunteer an explanation. May I not inquire into that?

The Court: The ruling will stand.

Mr. Avakian: I move again to strike that portion of his answer.

The Court: The Court has already ruled.

Mr. Avakian: I renew the motion.

Q. Your answer then is that you did not discuss it with Mr. Maundrell?

A. No, I am quite sure that I did not.

Q. Do you recall Mr. Maundrell's testimony that his allocation of \$31,895.50 out of the 175 thousand as cost of equipment and inventory was based on appraisal of the Menlo Club made by the California State Sales Tax representatives?

Mr. Campbell: Objected to—the record is the best evidence of what his testimony was.

The Court: He may answer the question.

A. I recall him saying that he had some discussion with appraisers for the State Sales Tax people.

Q. Did you ever make any inquiry of the Cali-

(Testimony of Ray Weaver.)

fornia State Sales Tax representatives to determine what appraisal they had made of the assets of the inventory of that business?

A. No, what they——

Mr. Avakian: That is the answer. He said he did not, that is the answer. [2345]

A. What they may——

Mr. Avakian: If he did not, there is nothing to explain.

The Court: All right. It is sufficiently answered.

Q. Is it your contention, Mr. Weaver, that the statement made when the return was filed with the Bureau of Internal Revenue, as to the manner in which this 175 thousand dollars was allocated and manner in which amortization deduction was computed, was a fraudulent statement?

Mr. Campbell: I am going to object on the ground this witness is not——

The Court: Objection sustained.

Mr. Avakian: Your Honor, he is——

The Court (Interceding): Mr. Avakian, I do not want to hear argument after I rule.

Mr. Avakian: May I ask permission to state my position before the ruling because you rule so fast we do not have opportunity to state our position.

The Court: When I rule that is final.

Q. Mr. Weaver, will you state, from your experience as an accountant, whether it is proper and correct accounting procedure to make entries in books of transactions promptly after they occur?



(Testimony of Ray Weaver.)

A. Yes, they should be made as promptly as possible.

Q. And in view of that answer, would you state that the fact [2346] that payment of 25 thousand dollars to Mr. Schriber for May 1, 1946, is not entered on Exhibit 140, but is entered on Exhibit 125C would indicate to you, as an accountant, that Exhibit 125C was in existence at approximately the time of that transaction?

Mr. Campbell: Objected to as argumentative and asking for his conclusion and opinion as to matters which are within the province of the jury.

Mr. Avakian: Your Honor, the witness has been permitted to testify liberally as to what proper accounting procedure is and conclusions. He has looked at every entry made by Mr. Maundrell in the books of the Menlo Club and has testified because of his experience as an accountant he concludes the fact the entry was made means certain things to him that are not in the book. Now it is in line with that, your Honor, to show where it helps us rather than hurts us, that may have some interpretation as an accountant would indicate certain things. He has been permitted to draw conclusions, his judgment as an accountant in numerous instances, where his conclusion was to our disadvantage. We would like to show instances in which his conclusions as an accountant would be favorable to us.

The Court: May I have the question?

(Question read.)

(Testimony of Ray Weaver.)

The Court: You may answer the question.

A. None of these records were actually adequately kept, so [2347] that normal bookkeeping procedure——

Mr. Avakian: I move the answer be stricken. He can answer that yes or no.

Mr. Campbell: He is entitled to give his opinion, he was asked for his opinion.

The Court: It will stand. Proceed with your answer.

A. Therefore, I couldn't use normal bookkeeping procedures to decide whether or not these entries have been made as of or approximately the dates indicated. I have no idea when they were made.

Q. But you have called upon your understanding of normal bookkeeping procedure in analyzing certain other entries made by Mr. Maundrell in the preparation of Exhibit 125-C, have you not?

A. That is right, and supported by other evidence.

The Court: We will take a recess now.

(Jury and alternate jurors admonished and recess taken at 4:04 p.m.) [2348]

January 31, 1952—10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further

Cross-Examination

By Mr. Avakian:

Mr. Campbell: May I inquire again if anything has been heard of the witness, Schriber, whom I understand the defense requested be recalled?

Mr. Golden: He will be here today.

Q. Mr. Weaver, as I recall, you testified earlier in your examination that it was your opinion and judgment that the books and records of the Menlo Club were in part on the cash receipts and disbursements basis and in part on the accrual method of account, is that correct?

A. I do not recall that as my testimony.

Q. Well, could you give us your testimony in that regard?

A. You mean could I restate what I said before or——

Q. Yes.

Mr. Campbell: I object to that in that form.  
The Court: Objection sustained.

Q. Is your opinion different than what it was? Give us your opinion now. I just want to get your testimony.

(Testimony of Ray Weaver.)

Mr. Campbell: Objected to in that form.

The Court: Objection sustained. [2349]

Q. Well, Mr. Weaver, from your analysis of the books and records of the Menlo Club, can you, as an expert accountant, state whether the books were kept in part on cash receipts and disbursements method of accounting and in part on accrual method of accounting?

A. The records kept by the Menlo Club were entirely incomplete and actually followed no particular method. It consisted only of a record of cash receipts and disbursements, plus a few ledger accounts. For example, the purchase from Mr. Schriber and some partners' accounts.

Q. Now you say the records were entirely incomplete. It is true, is it not, that all of the receipts of the business were entered in those books?

Mr. Campbell: Objected to as calling for conclusion if all of them were entered.

The Court: You may answer the question.

A. I don't believe they were. I don't believe any of the receipts of the Menlo Club itself were entered in there for certain periods. I would have to check the records.

Q. You are referring now to the year 1945, in which Mr. Maundrell testified the poker sheets were inadvertently carried out by the doorman. Let us take 1946. You have all the poker sheets for the year 1946 in your possession, have you not?

A. Yes.

Q. You still have them upstairs in this building,

(Testimony of Ray Weaver.)

except for [2350] the few offered in evidence here?

A. That is right.

Q. And is it not true, Mr. Weaver, that the receipts of the Menlo Club for 1946, as shown by the poker sheets prepared by the cashier's cage, were entered in the Menlo Club cash receipts book for 1946? A. Yes.

Q. And it is true, is it not, that the Menlo Club kept a book showing the receipts of the restaurant and bar business also for the year 1946?

A. Yes.

Q. Do you know of any testimony in this record of one penny or more of income of the Menlo Club for the year 1946, that was not entered in the cash receipts books of the Menlo Club?

Mr. Campbell: Objected to as incompetent. The record speaks for itself.

The Court: Objection sustained.

Mr. Avakian: Your Honor, he says it is incomplete. That is a damaging statement; I would like——

The Court (Interceding): I have ruled. If you want to know the reason, I will state it.

Mr. Avakian: Perhaps it would guide me.

The Court: I do not believe this witness is here for the purpose of telling us what the evidence in this case is. [2351]

Mr. Avakian: My point is, he says the books are incomplete——

The Court (Interceding): Here is my point. Let us not argue any further about it.

(Testimony of Ray Weaver.)

Mr. Avakian: Then in view of your Honor's ruling that it is not proper for this witness to answer that question, we would ask that his statement that the books were entirely incomplete be stricken.

The Court: Motion denied.

Mr. Avakian: Denied before I make the motion?

The Court: You made it; you are not going to add any more to it.

Mr. Avakian: You interrupted it before I finished. I did not complete it.

The Court: Well, very well.

A. Before——

Mr. Avakian: Just a minute. There is no question pending, Mr. Weaver.

Q. Let us get back then to the question which I asked you several questions back and let me see if you can give me an answer. If you can not, say so. If you can, will you answer this question, Mr. Weaver. You made examination of the books and records of the Menlo Club for the year 1946, as they are in evidence here, would you say, as an expert accountant, that those books were kept in part on the cash receipts and [2352] disbursements method of accounting and in part on the accrual method of account? If you can't answer, say so.

A. No, due to the very nature of the records——

Q. You mean you can not answer?

Mr. Campbell: Just a minute——

The Court: You propounded a question—let the witness answer. Read the question.

(Testimony of Ray Weaver.)

Q. Let us read the question and have him answer.

(Question read.)

A. I would say that since the books are incomplete——

Mr. Avakian: May we have that stricken, your Honor?

The Court: No let him proceed with his answer.

Mr. Avakian: I would be glad to cross-examine him. Since I can not, will you stop him making statements which your Honor will not permit me to ask?

The Court: The question was propounded and I propose to let him answer.

Mr. Avakian: I would love to get an answer.

The Court: You will get one if you will be quiet. Go ahead with the answer.

A. Since the records were incomplete in certain respects, it could not be on the accrual basis. The records were entirely on cash receipts and disbursements basis.

Q. They were going on the cash method?

The Court: Let me have that answer. [2353]

(Last answer read.)

Q. Were you wrong then in your earlier testimony, when I showed you that the Menlo Club income tax returns had a check mark that they were prepared on the cash basis and you said that that was incorrect, that they were actually kept partly on cash and partly on accrual basis?

(Testimony of Ray Weaver.)

A. We were talking then about the returns and not the books. Now some further explanation of that is necessary. Returns may be prepared on either the cash or the accrual basis of accounting. The regulations require that where inventories are income and a determining factor, no basis other than accrual is the correct basis of reporting income. Therefore, where inventories are a factor, the accrual basis should be used. Now it is true that in cases where inventories are used in small retail establishments, the Treasury Department has not required those small businesses to report on the accrual basis, because to do so in many cases would involve a hardship from a bookkeeping standpoint. Therefore, there has actually arisen a sort of hybrid basis of reporting income which means, from the standpoint of purchases and sales, where returns are actually on cash basis but from the standpoint of inventory they are on accrual basis, but the books themselves might be entirely on the cash basis.

Q. What is your opinion as to which method should have been used for the Menlo Club in the year 1946? [2354]

Mr. Campbell: Objected to as immaterial. The question is what was used.

The Court: Answer the question.

A. The correct method of reporting income, wherever inventories are income and determining factor, it should be accrual method. However, we made no adjustment from cash basis to accrual basis



(Testimony of Ray Weaver.)

in this case because to do so would have penalized the taxpayer for adjustment which purely a technical nature.

Q. As a matter of fact, Mr. Weaver, if you had made an adjustment of the Menlo Club to the accrual basis, would you have added any assets as of December 31, 1946, other than those which are already on your Exhibit 165?

A. To determine exactly what the charges would be and the resulting reflecting income. I can not answer without detailed analysis of every item at the beginning and end of each year.

Q. So far as accounts receivable are concerned, namely, the markers, you have already listed those in the assets as of December 31, 1946, Exhibit 165?

A. Yes; now that is an entirely different matter.

Mr. Avakian: Just a moment.

Mr. Campbell: I think he is entitled to finish his answer.

Mr. Avakian: He answered the question. He said yes.

The Court: He may proceed with his explanation. [2355]

Mr. Avakian: If it is an explanation of the answer, yes, but I would like to proceed with my question.

The Court: Let me have the question.

(Question and answer read.)

The Court: Do you want to explain?

A. Yes, it requires some explanation because I believe you are under misapprehension.

(Testimony of Ray Weaver.)

Mr. Avakian: Let's not worry about my misapprehension, Mr. Weaver.

The Court: No, Mr. Avakian, if there is any admonition going to any one in this court room, it will come from the bench.

Mr. Avakian: May I request the witness not to worry about my misapprehension?

A. To explain the difference between accounts receivable that arise as the result of exchange of one asset for another. For example, if you had ten thousand dollars cash on hand at the beginning of the year. During the year some one borrowed that money from you, you would no longer have ten thousand dollars cash in hand at the end of the year, but if we had to show any asset at the end of the year, our statement would reflect a loss of ten thousand dollars, which obviously would be incorrect, since your assets have not changed at all in amount, they have only changed in character. You have substituted ten thousand dollars cash and got ten thousand dollars [2356] accounts receivable. That is exactly the same situation with respect to these markers. They have been exchanged for cash. Now if the asset arises as the result of the receipt of income, or if the liability arises as the result of payment in incurrence of an expense, then you have items which are not properly taken into account on net worth basis, if the taxpayer is reporting—

Mr. Avakian: This is no explanation. This is a lecture on unrelated matters.

The Court: Your point is not well taken. You

(Testimony of Ray Weaver.)

may proceed if you have any further explanation you want to make.

A. I merely wanted to say finally that this is the reason you must make a distinction between cash receivable accounts and cash payable as to the source from which they arise, and you can not take into account, in determining net income under the net worth method, where the cash basis of reporting is used, any assets or liabilities that arise as the result of the receipt of income or the incurrence of expense, because to do so would give you an incorrect result.

Mr. Avakian: Your Honor, I move to strike the portion of the answer after "yes," as not responsive.

The Court: Motion denied.

Q. Now, Mr. Weaver, the fact is, is it not, in your Exhibit 165 you have already included as an asset of the Menlo Club [2357] on December 31, 1946, all of the markers that were in existence at that time, so far as the evidence here shows?

A. It will be necessary to do so——

Q. Just answer me.

The Court: Answer yes or no, Mr. Weaver.

A. Yes.

Q. Now from your examination over the last five years of the records and affairs of the Menlo Club, can you refer me to any single account receivable that is mentioned in the evidence in this case, as of December 31, 1946, of the Menlo Club,

(Testimony of Ray Weaver.)

which you have not already included in Exhibit 165?

A. You mean, are there some accounts receivable that are not on the exhibit?

Q. Is there any item of accounts receivable mentioned in this evidence in this case of the Menlo Club for December 31, 1946, which you have not already included in Exhibit 165?

Mr. Campbell: Objected to as asking him to characterize the evidence. The record speaks for itself.

The Court: Well, he may answer the question.

Mr. Campbell: I make the further objection in this regard, I think the question should be if he knows of any which are not, but to ask him to search the record—

The Court: You may answer the question.

A. Well, I have no recollection of any; no, sir.

Q. Now when you say to compute on an accrual basis in [2358] preparing Exhibit 165 would have been prejudicial to the taxpayer, you did not have in mind any particular assets that you were going to add to Exhibit 165 as of December 31, 1946? You did not make that adjustment, did you?

A. I had in mind this, that whatever that adjustment would be, it would be purely technical in nature and would have no place in any issue of fraud.

Q. You had no particular adjustment in mind in making that statement?

A. No, no specific one, no.

(Testimony of Ray Weaver.)

Q. Now isn't it a fact, Mr. Weaver, that if you put the Menlo Club on an accrual basis in your Exhibit 165, that as of December 31, 1946, you would have shown certain accounts payable as liabilities, which are not listed on Exhibit 165?

A. There was, to my recollection, no accounts payable on the records.

Q. Is it not true, Mr. Weaver, that if you were preparing a statement of the liabilities of the Menlo Club as of December 31, 1946, on accrual basis, you would have shown an amount for pay roll and withholding taxes due by the Menlo Club to the United States government and to the State of California as of December 31, 1946?

A. Those items would always be offset by assets of equal amount.

Q. Would you not have shown those as liabilities? [2359]

A. Certainly, offset by assets.

Q. And to the extent, Mr. Weaver, that the Menlo Club actually paid those liabilities after December 31, 1946, the adjustment to the accrual basis would have reduced the net worth of the Menlo Club as shown on Exhibit 165 for December 31, 1946, would it not?

A. I don't follow that question.

Q. Well, on the accrual method of accounting, you enter the liability at the time the liability arises, even though it is paid at a later date, isn't that correct?

A. Yes, also enter the asset.

Q. Yes, that is right. If, on December 31, 1946, the Menlo Club had certain liabilities which it had

(Testimony of Ray Weaver.)

not yet paid, on the cash method you would ignore those liabilities, but on the accrual method you would show them as liabilities on net worth statement, would you not?

A. If they were reported on the books. The mere setting up of a liability would give rise to an asset of equal amount.

Q. Are you speaking now of cash or accrual method? A. Accrual method.

Q. But on the cash method, you do not show that liability, do you? A. If it is not in the books.

Q. In your Exhibit 165 did you set up any liability on account of accounts payable by the Menlo Club at December 31, 1946? [2360] Would you like to refer to the exhibit? A. Yes.

Q. I will show you my photostat copy for convenience. A. None.

Q. You have not. And if you had set up Exhibit 165 on the accrual method of accounting, would you not have listed as liabilities on December 31, 1946, the amount of any obligations of the Menlo Club due on December 31, 1946, but not yet paid? A. That would only be half—

Q. Let us get that half first and then we will go to the other half. Would you have set up?

A. The two can not be taken independently.

Q. Would you have set up that liability?

A. Yes.

Q. What is the other half?

A. The other half is that there would have been another asset.

(Testimony of Ray Weaver.)

Q. And what would that other asset have been?

A. That would have been in connection with withholding the cash withheld from employees' checks, which is not reported in the books.

Q. Now you have actually shown in the assets on Exhibit 165 all of the cash in bank roll, the accounts receivable, any bank roll cash, any petit cash funds, and cash in bank accounts, have you [2361] not?

A. There may have been other cash, however. I have not looked at all the books.

Q. Isn't it a fact, Mr. Weaver, that on Exhibit 165 you have already included in assets every item of cash and every bank account balance as of December 31, 1946, that you know of that has been covered by the testimony in this case?

A. Every one that I know of, with the exception, I believe, there is testimony to the effect—if I am wrong, I am sure you will correct me—

Q. You can point to the testimony.

A. —that taxes withheld from employees' wages were kept in a separate tax box and as the time arrived for the payment of those taxes, the amount of cash was taken and deposited in the bank account; therefore, did not appear as part of the bank roll or as part of the accounts receivable or as part of the bank account.

Q. You are confused, are you not, with the cash box kept at the 186 Club, Mr. Weaver?

A. My recollection was that the same procedure was followed at both clubs.

(Testimony of Ray Weaver.)

Q. For my guidance, can you refer me to the witness who testified to that effect?

Mr. Campbell: Object to that, the record speaks for itself. He asks for his recollection——

The Court: Objection sustained. [2362]

Mr. Avakian: Your Honor, if he is going to justify from the basis of testimony, can't I just ask him if he can point to the testimony?

The Court: Objection sustained.

Mr. Avakian: I have read it all and I can't find it.

Q. Now, Mr. Weaver, you also stated that in your opinion—were you about to refer me to some testimony in that respect?

A. No, I was going——

Q. (Interrupting): Very well. Now, Mr. Weaver, you testified that in your opinion the Menlo Club was not a partnership but rather was an enterprise belonging solely to Mr. Remmer. You know, do you not, from your examination of the records in this case, that various parties described in evidence here as partners in the Menlo Club, received credits on the books of the Menlo Club for a percentage share of the profits for each respective year? You have seen that in the books that are in evidence here? A. Yes.

Q. And let us take Mr. Maundrell as an example. I call your attention to prosecution's Exhibit 125, which is a ledger of the Menlo Club—perhaps the prosecution might look at this sheet before I show it to the witness—and particularly



(Testimony of Ray Weaver.)

to the page entitled: "Partners' Account Tiny's Restaurant, Bar and Menlo Club, Harold H. Maundrell, 10 per cent." I will ask you to look at that sheet and first of all will you tell me the [2363] balance of the account that was credited to Mr. Maundrell for the end of the year 1945?

A. Apparently carried over from another sheet it shows "Balance 1945," there is no designation as to whether or not it is credit or debit, but I presume from subsequent entries in the account that it was intended to be a credit balance, of \$13,003.37.

Q. And I call your attention to prosecution's Exhibit 89, which is the Menlo Club partnership return of income for the year 1945, and I will ask you if on Schedule I, "Partners' Share of Income and Credits," there is allowed to Harold H. Maundrell in amount of 10 per cent, a credit of \$13,003.37? A. That is what is entered.

Q. And that is the same amount in Exhibit 125?

A. That is right.

Q. Will you tell me the amount that is credited to Mr. Maundrell's capital account as his share of the profits for the year 1946, in Exhibit 125?

A. There is an entry here, 1946, apparently before a succeeding date of June 14, 1946, which states the profit for 1946, under credits, \$8,349.65.

Q. And I call your attention to prosecution's Exhibit 90, the Menlo Club partnership return of income for the year 1946, and ask you if that does not show in Schedule I, Harold H. Maundrell, 10

(Testimony of Ray Weaver.)

per cent, \$8,349.65? [2364] A. Yes, it does.

Q. And that is the same figure you just read from Exhibit 125? A. That is right.

Q. And after the crediting of that 1946 share of profit, what was the credit balance in Mr. Maundrell's account as shown by Exhibit 125?

A. \$21,353.02.

Q. Now is it not true, Mr. Weaver, that Exhibit 125, the account of Harold Maundrell before you, shows that during the year 1946, during the year 1947, and during the year 1948, Mr. Maundrell withdrew various amounts from the Menlo Club which were then deducted from his account to reduce the balance?

A. There are charges against his account. Some of them are for withdrawals and some for payments, apparently made from his account.

Q. Payments of his income tax?

A. I don't know what they represent, simply marked "Collector Internal Revenue," "Franchise Tax" and so on.

Q. What was the balance in Mr. Maundrell's account on December 31, 1946, according to the exhibit before you? A. \$17,355.22.

Q. Now can you compute for me on this sheet of paper, which I will hand you, the amount of money withdrawn by Mr. Maundrell from the Menlo Club after December 31, 1946, according to [2365] Exhibit 125?

Mr. Campbell: Object to the question in that form—withdrawn. He can state the total of the

(Testimony of Ray Weaver.)

charges shown in the books of that account. It would be his opinion and conclusion as to what Mr. Maundrell withdrew.

The Court: You may answer the question.

A. Do you want me to include the payments made?

Q. Well, in accounting, Mr. Weaver, a payment made on behalf of a partner and charged to his account is the same as withdrawal.

A. Well, you have to be careful in using accounting terminology here, I think. After December 31, 1946?

Q. Yes, that's right.

A. The total debits are \$15,600.

Q. What was the balance at the end of 1946?

A. \$17,353.22.

Q. So that, to use round figures, of the 17 thousand dollar credit balance that Mr. Maundrell had on the books at the end of 1946, approximately 15 thousand dollars was either withdrawn by him or paid for his account after December 31, 1946, is that right?

A. Yes, that's right.

Q. Now, Mr. Weaver, you know, do you not, that Mr. Maundrell did work in connection with the affairs of the Menlo Club?

A. Yes. [2366]

Q. Now would it not be true, Mr. Weaver, that if you disallowed partnership status to Mr. Maundrell in the Menlo Club as a matter of proper accounting procedure, you should allow in some

(Testimony of Ray Weaver.)

amount a salary to him as an expense of the business?      A. I believe he was paid a salary.

Q. The same amount, isn't that true?

A. Yes.

Q. If we assume, as you have assumed, that the Menlo Club was not a partnership, but that it was a sole enterprise of Elmer Remmer, and if we assume further that Mr. Maundrell's employment was on the basis of a fixed salary, plus ten per cent of the profits of the business, and if we assume further that the Menlo Club was on the accrual basis of accounting, would the Menlo Club not be entitled to a deduction in the amount of the actual salary paid to Mr. Maundrell, plus the ten per cent share of the profits to which he was entitled under his agreement?

Mr. Campbell: Objected to as incompetent and assuming facts not in evidence, not within the scope of the direct examination.

The Court: Objection sustained.

Mr. Avakian: May we be heard on that?

The Court: Yes. We will excuse the jury.

(Jury and alternate jurors admonished and excused at 10:40 a.m.) [2367]

(In the absence of the jury.)

(NB 337—PP 92-100. NB 338—PP 1-4.)

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further

Cross-Examination

By Mr. Avakian:

Mr. Campbell: I believe at the time of recess there was pending an objection to the form of question then asked.

The Court: Objection sustained.

Mr. Avakian: I understand it was sustained as to the particular form, your Honor.

Q. Now, Mr. Weaver, let us assume, as you have assumed, that the Menlo Club was not a partnership but rather was an enterprise owned solely by Mr. Remmer; let us assume further that during the year 1945, and the year 1946, Mr. Maundrell was an employee of the Menlo Club on arrangements, whereby he was to receive a fixed salary, plus 10 per cent of the profits each year; let us assume further that Mr. Maundrell, during the years 1945 and 1946, actually collected his fixed salary but that the amount of 10 per cent share of the profits was credited to him on the books; let us assume further that in the years 1947 and 1948, Mr. Maundrell actually collected, on account of the salary which had been credited to him on the books on

(Testimony of Ray Weaver.)

December 31, 1946, the sum of approximately [2368] 15 thousand dollars; let us assume further that in the business of the Menlo Club inventories were a factor—would you then state, as an expert accountant, that under proper accounting procedure the Menlo Club business should set up, as an accrued liability at December 31, 1946, the amount of Mr. Maundrell's 10 per cent share of the profits, which have been credited to him on the books at that time and which had not been withdrawn?

Mr. Campbell: Objected to as incompetent, not within the scope of direct examination; immaterial here, in that it would seek to vary the testimony and the evidence before the Court in indulging in an assumption.

The Court: I can't hear you, Mr. Campbell.

Mr. Campbell: I object on the grounds that the question is incompetent, in that it assumes facts not in evidence; that it is immaterial, in that it seeks to go outside of the issues and evidence in this case, and finally that it is not within the scope of the direct examination.

The Court: The objection will be sustained.

Q. Mr. Weaver, you stated in one of your answers a few moments ago that under the Treasury Regulations, where inventories are a factor, the regulations require the use of the accrual method of accounting. Can you refer me to the particular section of the regulations which you had in mind?

A. That was only part of the answer. [2369]

Q. Well, it is the section of the regulations that

(Testimony of Ray Weaver.)

you had in mind that I want to get from you now. Would you like to look at the regulations?

A. No——

Mr. Campbell: I am going to object. These matters, it seems to me, can be taken up outside the court.

The Court: Was your objection to the question he would like to look at something or another question before the Court?

(Previous question read.)

The Court: Answer that question.

Mr. Campbell: He started to answer.

The Court: Then there was another question.

Mr. Avakian: May we have the answer to that question?

A, This is asking for reference to some section of the regulations?

Q. Yes.

Mr. Campbell: Then I am going to object on the ground it states fact not in evidence. That was not his testimony.

The Court: Let us have this question read. Listen to the question.

(Question read.)

A. I can't remember the section numbers nor its contents without referring to the regulations themselves.

Mr. Avakian: I wonder if your counsel has a copy of the [2370] regulations which he can hand

(Testimony of Ray Weaver.)

you for that purpose? I can furnish you with my own copy.

Mr. Campbell: We do not. I object to it as immaterial. It is a legal matter.

The Court: Objection overruled.

Q. I will hand you——

Mr. Campbell: Incidentally, my objection was not to his pointing to the regulation, but the cross-examining of his testimony, what his testimony was. The witness stated in his first answer that that was not his exact testimony.

The Court: Let me have the question.

(Question read.)

The Court: Is it your objection that he did not so state?

Mr. Campbell: That was only a portion of the statement which he made and in that respect would be misleading.

The Court: Objection overruled. He may answer the question.

Q. I will hand you my copy, Mr. Weaver, for your use. Section III regulation referring to income tax under the Internal Revenue Code issued by the Secretary of the Treasury, and I ask you if, from your examination of that, you can refer me to the particular section or sections you had in mind?

A. The methods of accounting prescribed are generally stated in Sections 29.41-1 through 29.41-3.

Q. Is that Sections 29.41-1-2-3, are those the sections to [2371] which you refer?



(Testimony of Ray Weaver.)

A. Yes, that is right.

Q. Have you finished looking at that now?

A. Yes, unless you want me to state—pardon me.

Q. Would you like to read the language on that?

A. Not particularly.

Q. Now, Mr. Weaver, are you aware of the fact that the provisions of those sections to which you have just referred were, in 1951, held invalid by the United States Circuit Court of Appeals in the case of Glenn v. Kentucky Color & Chemical Co., Inc., 186 Fed. (2), 975?

Mr. Campbell: Objected to——

The Court: Sustained.

Q. Let me ask you if you are familiar with the case of Glenn vs. Kentucky Color & Chemical Co., Inc.?

Mr. Campbell: Objected to——

The Court: Mr. Avakian, please do not impose upon the Court.

Mr. Avakian: Your Honor——

The Court (Interceding): Do not impose on the Court. Now let us not have anything further said.

Mr. Avakian: Would it be possible to be heard in the absence of the jury?

The Court: No, nothing in the absence of the jury. Just go along. You know what I mean. [2372]

Mr. Avakian: I have to defer to your Honor's ruling.

The Court: You know when the Court rules, attorneys should not try to evade the ruling by saying the same thing in a different color.

(Testimony of Ray Weaver.)

Mr. Avakian: It is not the same thing, your Honor.

The Court: That is all. Let us go along.

Mr. Avakian: Your Honor, I must respectfully feel I should cite as prejudicial error——

The Court: Very well, you may cite it. Let us go along.

Q. In making the statement, Mr. Weaver, that where inventories are a factor, the Treasury regulations require the use of the accrual method of accounting, did you take into account any sections of the regulations, any sections of the Internal Revenue Code, or any court decisions, aside from these three sections of the regulations which you mentioned?

Mr. Campbell: Objected to as immaterial and entirely incompetent.

The Court: Let me have the question.

(Question read.)

The Court: Objection sustained.

Q. Mr. Weaver, in testifying on Monday morning, I believe it was, in your direct examination with regard to your Exhibit 175, which is designated Elmer F. Remmer, Gallagher & Burton whiskey equity at December 31, 1943; 1944, 1945, and 1946, you were questioned as to whether the records of Cal-Neva, Inc., [2373] contained any entries in connection with this whiskey, and you stated that there was an entry showing payment for 100 cases on September 27, 1944, check No.

(Testimony of Ray Weaver.)

6435, in amount of \$6,896, and you stated that that was charged to liquor and whiskey purchases, and then on further questioning you gave these answers to these questions—I am reading from page 2148 of the transcript, beginning at line 19—you had before you then to refresh your recollection Cal-Neva ledger, which I believe is 146.

Mr. Campbell: At that time you say he testified it was for 100 cases? At the top of 2148 you will see he says, "I believe it was 100 cases, I am not sure of the amount."

Mr. Avakian: I will read the testimony beginning with line 15, page 2147:

"No, there were no entries in connection with this whiskey that appeared in the books of Cal-Neva whatsoever, except one entry, indicating the purchase by Cal-Neva from Mr. Remmer of a lot of 100 cases.

\* \* \*

"Q. Now what was the amount of the whiskey which you refer to as having been reflected in the Cal-Neva books as having been delivered to Cal-Neva?

"A. Represented a lot of 100 cases. I believe it was 100 cases, I am not sure of the amount." [2374]  
Next question:

"Q. Mr. Weaver, can you refer to the Cal-Neva records and to where that entry appears?

"A. Yes.

"Q. Would you do so? What book is that in?

(Testimony of Ray Weaver.)

"A. Under date of September 27, 1944, on page 113 of the check register.

"Q. That is exhibit——

"A. 146. There is an entry E. R. Remmer, 27th day of September, check No. 6435, and the amount is \$6,896, and it is charged to liquor and whiskey purchases. That refers to the purchase of——

"Q. Are you reading from the book?

"A. No, but I know that refers to the purchase of Gallagher & Burton whiskey.

"Mr. Golden: That is not responsive. The question is what the books show.

"Q. Mr. Weaver, will you state in what manner you identify that as referring to the Gallagher and Burton whiskey?

"A. There might have been a notation on the check itself. If I could see the original check.

"Mr. Campbell: All right, we will pass that and if you will look for it during the afternoon recess we will come back to it." [2375]

Q. Since Monday, when that testimony was given, have you looked for that check, Mr. Weaver?

A. Yes.

Q. Have you found it?

A. No, I have not.

Q. Are you able, from further examination that you made, to complete or clarify your answer on that matter at this time? A. Yes.

Q. Do you need any further books before you for that purpose?

A. Well, I am not sure—Mr. Stewart gave some

(Testimony of Ray Weaver.)

testimony as to the release of two 100-case lots of this whiskey to Cal-Neva a month or two prior to the issuance of this check. Now I do not recall whether those orders for the release of that whiskey are in evidence here or only Mr. Stewart's testimony is there in the record.

Q. Do I understand from that that you are not yet ready to give us the answer based on evidence in this case, that you wish to check further on that before you can give us the answer?

A. If there are any orders in evidence, I would like to see them.

Q. Have you already done that since last Monday, or would you still wish to make further investigation of the records to answer the question; so we will pass it on. In other words, are you prepared to give us an answer based upon whatever exhibits are here? [2376]

A. I believe so. As I recall now, there are no exhibits in evidence. I would like to check to be sure.

Mr. Avakian: I made no search myself on that point. I thought that you were going to do it.

Q. Are you able to give us the accurate answer to that now, or would you need to make further reference to the evidence?

A. I have some photostats of orders releasing them.

Q. Are they in evidence here?

A. They are not in evidence, no.

The Court: Did you finish your answer?

(Testimony of Ray Weaver.)

A. I meant to add that I can use this to refresh my recollection on the subject matter.

Q. My question was, are they in evidence?

A. No.

The Court: Your question was an interruption of his answer. Now I want to see if he wants to answer?

(Question read.)

(Answer read.)

The Court: Does that complete your answer?

A. Yes.

Q. Now in your Exhibit 175—and I believe you have the original of that before you, do you not?

A. Yes.

Q. You have set up what purports to be the equity of Mr. Remmer in the Gallagher & Burton whiskey mentioned on that exhibit, at the end of each of the years 1944, 1945, and 1946, is [2377] that correct? A. Yes.

Q. In preparing that exhibit and in computing the amount of Mr. Remmer's equity, have you made your computations on the basis of the money actually expended by Mr. Remmer for the purchase of those assets and for any additions to the cost of them? A. Yes.

Q. And have your computations been based entirely and solely on the evidence that has been received in this case?

A. Yes. I believe in one or two cases that other items may have been used as corroboration.

(Testimony of Ray Weaver.)

Q. You mean items that are not in evidence here?      A. Yes.

Q. Without indicating what other material you used, can you point to the particular item on Exhibit 175 as to which you used material outside of the evidence in the case?

Mr. Campbell: Pardon me—I object to that—

The Court: Objection sustained. The reason I sustained the objection was that your question assumes an incorrect statement of the witness' answer.

Q. You said that as to certain items—

The Court (Interrupting): He used them for corroborating.

Mr. Avakian: But he did use material. [2378]

Q. Now as to any items on Exhibit 175, did you use any material for corroboration that is not in evidence here in this case?      A. Yes.

Q. Can you tell me what particular items, without stating what the other material was?

A. The allocation of the amount owed to Sierra Wine & Liquor Company as between the year-ends had to be allocated.

Q. Which year-ends are you referring to now?

A. Well, Mr. Barengo's testimony—

Q. Which year-ends are you referring to?

A. 1943-44.

Q. Those two years?      A. Yes.

Q. Was there any other item on Exhibit 175 as to which you made reference in corroboration to material which is not in evidence in this case?

(Testimony of Ray Weaver.)

Mr. Campbell: I am going to object to the materiality.

The Court: He may answer the question.

A. I do not believe it would be done in any other case because all of the other deliveries are in the testimony and the deduction of amounts on hand were merely taken per case cost.

Mr. Avakian: May we have the question read again?

The Court: Yes, read the question. [2379]

(Question read.)

Q. Answer this yes or no.

A. I do not believe so.

Q. Now I call your attention to the item about half way down the first page of the exhibit, which is entitled, "1944 Floor Stock Tax" and the amount of it in the extreme right-hand column is shown as \$7,479.22. Are you able at this time to refer me to the evidence in this case upon which you entered that amount for that item?

A. Are you referring to the second carload?

Q. Referring to the amount of 74 hundred some odd dollars.

Mr. Campbell: Pardon me, Mr. Avakian. There are two lots set forth in that amount. It refers to carloads, you will observe, on the exhibit.

Mr. Avakian: There is only one figure on my photostat of the exhibit in the amount of \$7,479.22. It is as to that figure, your Honor, for Mr. Campbell's information, that I am asking the question.



(Testimony of Ray Weaver.)

A. There is a floor stock tax return here in evidence with that inventory attached.

Q. I hand you prosecution's Exhibit 60, which is designated "Return of Floor Stock Tax on Distilled Spirits, Malt, Liquors and Wines Under Revenue Act of 1943. Name of Taxpayer, Cal-Neva, Inc., Lake Tahoe." Is that the exhibit to which you refer? [2380] A. Yes.

Q. And that shows the payment of a tax in amount of \$7,479.22, is that correct?

A. Yes, that is right.

Q. Now, Mr. Weaver, in computing Mr. Remmer's equity in the Gallagher & Burton whiskey described on Exhibit 175, for the purpose of the use of that exhibit in computing Mr. Remmer's income on net worth basis, is it not true that proper accounting procedure calls for the inclusion in that equity of Mr. Remmer's only amounts which were paid out of Mr. Remmer's funds?

A. May I have the question again?

(Question read.)

Mr. Avakian: I will restate it. I will go into a couple of preliminary questions first.

Q. Mr. Weaver, Exhibit 175 was prepared by you and offered in evidence here for the purpose of showing your computation of Mr. Remmer's equity in this Gallagher & Burton whiskey on the respective date shown in this exhibit?

Mr. Campbell: Objected to as incompetent, his characterization.

(Testimony of Ray Weaver.)

The Court: Objection overruled. Answer the question.

A. Yes.

Q. And this exhibit is one of the links in the chain of computing Mr. Remmer's total net worth according to the theories [2381] of the prosecution on the respective dates shown in Exhibit 175?

Mr. Campbell: Objected to as incompetent.

The Court: Objection sustained.

Q. Well, Mr. Weaver, in preparing a statement of Mr. Remmer's equity in the Gallagher & Burton whiskey described in Exhibit 175, isn't it true that proper accounting procedure, where the purpose of computing the equity is to determine net income on net worth method, would be to include in that equity only the sums of money actually invested in that property by Mr. Remmer?

A. No, if you include in that definition of "actually invested in property" by Mr. Remmer amounts paid to his account, they may have been charged to him, otherwise.

Q. With that qualification you would say that the answer is yes?      A. Yes.

The Court: We will take a recess at this time until 1:30.

(Jury and alternate jurors admonished and recess taken at 11:45.)

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WILLIAM F. REMMER, FREEDOMER,

UNITED STATES OF AMERICA

ON WAY OF CONSIDERING TO INVESTIGATION OF THE CASE OF REMMER  
AND HIS WIFE, WILLIAM REMMER

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No. 13281

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**United States  
Court of Appeals**  
for the Ninth Circuit.

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ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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**Transcript of Record**  
In Nine Volumes  
Volume VII  
(Pages 2749 to 3137)

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**Appeal from the United States District Court  
for the District of Nevada.**

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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January 31, 1952—1:30 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.) [2382]

MR. WEAVER

resumes the witness stand on further

Cross-Examination

By Mr. Avakian:

Mr. Campbell: Now I understand from Mr. Weaver, when he was attempting to volunteer something this morning, he desired to make a correction of some testimony given yesterday. I wish to advise the Court of that.

Mr. Avakian: We are very glad to have the correction. I wonder if Mr. Weaver could tell us the point to which he is referring?

A. Yes. Yesterday you asked me if I made any investigation of an appraisal by the Sales Tax people in the State of California with regard to the Menlo Club and I believe I said in answer to that that I had not, which is true, that I, myself, did not make an investigation, but I did cause an investigation to be made and you can find in the record—

Mr. Campbell: Pardon me—you did cause one to be made?

A. Yes, that is right.

(Last question and answer before recess read.)



(Testimony of Ray Weaver.)

Q. Now, Mr. Weaver, in entering on Exhibit 175 the amount of \$7,479.22 as part of Mr. Remmer's equity in that liquor, you assumed, did you not, that that amount of money had been paid as 1944 floor stock tax, either by Mr. Remmer or out of Mr. Remmer's funds or by Cal-Neva, Inc., in a manner which resulted in the amount being charged?

Mr. Campbell: Objected to as a compound question. [2383]

The Court: Objection sustained.

Q. Well, did you assume, in inserting that amount in Exhibit 175, that the payment of that 1944 floor stock tax, which is shown on the Cal-Neva, Inc., return, represented a payment by Mr. Remmer or a payment credited to his account, one or the other?

Mr. Campbell: Same objection. When he puts an alternative he—

The Court (Interceding): Well, he may answer.

A. When you say "payment credited to his account," you mean a payment made for his account?

Q. Well, I understood you to say in a prior instance that it would be proper to include that amount of Mr. Remmer's equity only if it came out of his funds, so if it was made in a manner charged against him, and I tried to follow that.

A. Yes, but in your last question you used the words "credit to his account" instead of charged.

Q. Well, charged to his account. You did make the assumption, with that change in my question?

A. That is what the facts indicated to me, yes.

(Testimony of Ray Weaver.)

Q. And your answer is yes, you made the assumption?

A. Well, the facts indicated that to me.

Q. Because the facts indicated to you, you did make the assumption?

Mr. Campbell: I object—— [2384]

The Court: He has answered three times yes.

Mr. Avakian: As long as I understand his answer is yes.

The Court: It has been answered three times.

Q. Now, Mr. Weaver, if you are going on that assumption, then that amount should not be inserted in Exhibit 175?

Mr. Campbell: Objected to as argumentative.

The Court: Objection sustained.

Mr. Avakian: That is not argumentative. It is just a hypothetical statement.

The Court: Objection sustained.

Q. Mr. Weaver, can you point to any testimony in this case that shows that Mr. Remmer paid that amount of floor stock tax shown on the Cal-Neva, Inc., return?

Mr. Campbell: Objected to, the record speaks for itself.

The Court: Well, the objection will be overruled.

A. Are you confining me to testimony?

Q. In this question I am. There will be another one.

Mr. Campbell: There is documentary evidence as well as oral.

(Testimony of Ray Weaver.)

The Court: This evidence includes both documentary and oral.

Mr. Avakian: I was trying to avoid compound questions by taking this piecemeal, and after I asked him regarding testimony I was going to ask in regard to exhibits.

Q. Can you show where in this case it shows Mr. Remmer paid [2385] that tax? Can you point to it in the testimony or the exhibit? A. Yes.

Q. Which ones?

A. There are a number of them.

Q. Testimony or exhibits? A. Both.

Q. Would you refer them to me, please?

A. First is the testimony of Mr. Forrester that this tax was paid cash as indicated by the notation "Cash" at the top of the return.

Q. The return shows that, does it not?

A. Yes, that's right.

Q. Very well.

A. Secondly, the records of Cal-Neva, itself, which show no payment of such an amount, either for Cal-Neva or for any one else. The whiskey on which the floor stock tax was paid is listed by case numbers on the sheets attached to Exhibit 60, which case numbers were checked in sufficient detail to satisfy us that they were the same cases of whiskey that were in storage at the Nevada Transit & Warehouse Company, according to an inventory which I believe was presented here by Mr. Stewart and is in evidence. Since the books indicate that this is the same whiskey as purchased by Mr. Remmer and no

(Testimony of Ray Weaver.)

record of any payment of the floor stock tax on Cal-Neva books and [2386] the tax was paid in cash, it must have been paid by Mr. Remmer, unless we assume some outsider paid it for him.

Q. Was there any other evidence that you relied upon in reaching that conclusion, evidence in this case, I mean, of course?

A. Not that I recall now. If you have any points to raise I might think of some others.

Q. You state one of the reasons you drew that conclusion was there was no evidence in the Cal-Neva books that Cal-Neva had made the payment of that tax, which is \$7479.22 in amount, either for Cal-Neva or for anybody else and for that reason, and the other reasons you mentioned, you assumed Mr. Remmer must have made it. Did I understand you correctly?

A. Yes, the facts indicate to me that he did make it.

Q. It is just as possible, is it not, Mr. Weaver, that Cal-Neva might have used some of its own cash to pay that tax, without the bookkeeper having made an entry of it on the Cal-Neva books?

Mr. Campbell: Objected to as speculative.

The Court: Objection sustained.

Mr. Avakian: It is no more speculation than the other conclusions, your Honor.

The Court: I am satisfied the ruling is correct.

Q. You have found in your accounting experience, have you not, Mr. Weaver, that bookkeepers

(Testimony of Ray Weaver.)

sometimes do make mistakes [2387] and fail to record payments as made?

Mr. Campbell: Objected to as argumentative.

The Court: Objection sustained.

Q. Mr. Weaver, I believe you testified earlier that in computing net income on the basis of net worth increase, expenditures which are deductible for income tax purposes are of no consequence, immaterial, is that true? A. I did not say that.

Q. Is that true? A. No, it is not true.

Q. In computing net income?

A. Deductible expenses are not taken into account in making the computation. However, certain of those expenses which are deductible in nature may become incorrectly deducted in amount on the return filed.

Q. Perhaps I did not make my question clear. In constructing the net income of a taxpayer on net worth increase method, under proper accounting procedure, no addition is made on account of expenditures of the taxpayer during that period which are deductible for income tax purposes, isn't that true?

A. Well, there are two methods of computing. If you follow that method where you can add deductible expenditures in order to arrive at the sum total and then deduct again in order to make complete return, it would be the same——

Q. By the time you got to the net income, you would have ignored [2388] it, wouldn't you?

A. That is right.

(Testimony of Ray Weaver.)

Q. In constructing Exhibit 175, in which you added to Mr. Remmer's equity in this liquor the floor stock tax payment of \$7479.22, you assumed, did you not, that that tax payment was not a deductible expenditure for income tax purposes?

A. It is an additional cost of the liquor, yes.

Q. Now, in exercising your judgment that that should be treated as an additional cost of the liquor, rather than being treated as a deductible expenditure, did you rely to any extent at all upon any provision of the Internal Revenue Code or the Treasury Regulations?

Mr. Campbell: Object to the question as assuming a fact not in evidence, that there was a reliance on any independent judgment.

The Court: He may answer the question.

A. I can't think of any particular provision. I must have relied on the sum total of past training and experience.

Q. Does your past training and experience include a reading of the Internal Revenue Code and the Treasury Regulations?

A. Undoubtedly so, yes.

Q. You are not sure?

A. Well, I must have. I did not sit down and read it at any one time, but I surely must have read most of it at one time or another. [2389]

Q. Isn't it true, Mr. Weaver, that in the computation of net income on net worth method, proper accounting procedure calls for not adding to the net worth increase federal excise taxes paid as ordinary

(Testimony of Ray Weaver.)

and necessary expenses connected with or pertaining to the taxpayer's trade or business, and likewise correct accounting procedure calls for not adding to the net worth increase any federal excise taxes paid as ordinary and necessary expenses in connection with the supervision, maintenance, or conservation of property held for profit or for production of income?

A. This does not come under that classification.

Q. Can you answer my question as to if correct accounting procedure calls for that?

Mr. Campbell: I object to that as immaterial.

The Court: Oh, I will permit the answer.

Q. Answer the question, please.

The Court: Didn't he answer?

(Question and answer read.)

Q. The question calls for correct accounting procedure.

The Court: I think that answers the question.

Mr. Avakian: I disagree with your Honor, but I will have to accept your ruling.

Q. Mr. Weaver, can you tell me why you conclude that the floor tax here is not covered by the accounting procedure in answering my [2390] question?

A. Because that provision relates specifically to ordinary and necessary expenses. This is not an ordinary and necessary expense. It is an additional cost of the liquor itself.

Q. Is it not true, Mr. Weaver, that in the case of

(Testimony of Ray Weaver.)

federal excise taxes levied with respect to merchandise held for resale, a correct accounting procedure provides that the taxpayer may either add the tax to the cost of the goods or may deduct it as a current business expenditure?

A. I wouldn't attempt to make a general answer on federal excise taxes because I believe the rulings would depend upon the particular excise tax involved.

Q. In other words, you feel that the answer may be one way as to some excise tax and another way as to others?

A. Yes. Also this tax in accounting cost would be part of the purchase.

Q. Are you familiar, Mr. Weaver, with the ruling issued by the Commissioner of Internal Revenue on January 26, 1942, entitled——

Mr. Campbell: May I see that before the question is propounded? Counsel made reference, I think, to 10 pages of printed matter——

Mr. Avakian: Perhaps I can withdraw that question for now and permit counsel to examine that at the recess, your Honor, so I will withdraw the question at this time.

Q. Are you familiar, Mr. Weaver, with the provisions of Sec. [2391] 29.23(c)-2 of Treasury Regulations 111?

Mr. Campbell: Objected to as immaterial and incomprehensive.

Mr. Avakian: I would be glad to show it to him, your Honor.



(Testimony of Ray Weaver.)

The Court: You may go ahead. You may show it to him.

Q. I will hand you my copy of the regulations, Mr. Weaver, for your convenience.

A. You are referring to the one you have underlined?

Q. I have underlined a portion of several sections—29.23(c)-2 is the one I am calling to your attention in particular.

A. I believe I have seen that or similar sections before.

Q. Did you rely to any extent at all upon that section of the regulations in exercising your judgment with respect to adding this floor stock tax, in the amount of \$7479.22, to the cost of the goods, rather than treating it as a currently deductible expenditure?

Mr. Campbell: Objected to as incompetent.

The Court: What is your point on that, Mr. Campbell? My recollection of the testimony is that he relied upon the evidence in this case, documentary and oral and also on the regulations.

Mr. Campbell: Yes, he also stated that he relied upon the sum total of his experience. Now he is shown a regulation and asked if it is familiar and he has seen it before. He [2392] said yes. "Did you rely upon this specification regulation?"

The Court: To any extent.

Mr. Campbell: That is right. If he says yes, that is only part of the answer, because that is only part of what he relied upon under his own testimony.

(Testimony of Ray Weaver.)

The Court: You may answer the question.

A. To tell you what I relied on, I would have to study this, as this refers to the other sections, and also study all of the rulings and court decisions made in connection with it.

Q. Can you tell me at this time whether you relied on that section to any extent at all in exercising your judgment with respect to this particular item, Exhibit 175?

Mr. Campbell: May I further point out, your Honor——

Mr. Avakian: I think your Honor ruled.

The Court: I think I can indulge one side occasionally. We have had so many instances throughout this trial where after ruling there is argument.

Mr. Campbell: This is a new question, and I wish to renew my objection. I wish to point out as an example a lawyer is asked for the reason that he does a particular thing. He is relying upon his sum total judgment. Now he is asked, "Have you read this particular decision of the court"? He may have read it, it may be one of many or may be one along with a number of other decisions.

The Court: I think if a lawyer is asked such a question [2393] he would be capable of answering and I think this witness likewise.

Mr. Campbell: I think he is, but I do not wish the question to be to the exclusion of other means.

The Court: I do not think the question excludes the other factors, so he may answer the question.

Q. Do you remember the question, Mr. Weaver?

(Testimony of Ray Weaver.)

A. I would like to have it read.

(Question read.)

A. I have no independent recollection as to thinking of this section. Of course, I do not know. Sometime past reading decisions may have influenced me.

Q. It is true, is it not, Mr. Weaver, that that section deals specifically with the problem of either adding an excise tax to the cost of the goods or deducting it as an expenditure?

Mr. Campbell: If the Court please——

The Court: Objection sustained.

Q. Mr. Weaver, if you had omitted from Exhibit 175 the item of \$7479.22 as the 1944 floor stock tax, the amount of Mr. Remmer's equity in that Gallagher & Burton whiskey would have been reduced by the amount of that tax, would it not?

A. Certainly.

Q. Mr. Weaver, it is my recollection—and you correct me if I am wrong—that you testified earlier that the return of the Menlo Club partnership return of income for the year 1946 was [2394] actually prepared in part on cash method and in part on accrual method. Is my recollection correct?

A. Yes, that is right.

Q. And in making that statement, were you referring to the fact that in the books of the Menlo Club for the year 1946, relating to the bar operation and the restaurant operation, the expenses accrued at the end of 1946, but not paid until 1947, were

(Testimony of Ray Weaver.)

included as 1946 expense in making up the totals that were used on the tax return?

A. I believe I am referring—I would like to see the record of my testimony. I think that states precisely what I was referring to.

Q. Well, I don't know—this morning's testimony isn't written up and I don't know where it would be yesterday. Let me see if we can get at it faster this way. Let me show you Exhibit 127, which is Tiny's Restaurant for the year 1946. That is one of the books of the Menlo Club which you examined in the course of your investigation, is it not?

A. Yes.

Q. Now, let me call your attention, Mr. Weaver, to a page which at the top of it appears date December, 1946, and has heading, "Payments of Cash and Checks Paid Out," as well as to two pages which follow it, and in connection with that let me call your attention to a subsequent page entitled, "Summary Tiny's Restaurant," and particularly to the entries in that [2395] summary for the month of December. By comparing the amounts in the summary for the month of December as paid out by check, with the entries on the three preceding pages that I mentioned as check payments, can you tell us whether, in the summary sheet there was included, as expenses paid by check for the month of December, a number of checks which shown to have been dated January of 1947?

A. The summary to which you refer is summary of the pay roll and I see no entries of pay roll on

(Testimony of Ray Weaver.)

these particular sheets on the pages here indicated.

Q. I showed you the wrong summary sheet. It is the reverse side of the sheet I showed you. I call particular attention to the summary sheet, "Tiny's Payments by Check," December, the amount of \$21,065.64, isn't that correct?

A. It is either \$21,065.64 or \$21,165.64.

Q. Now, I call your attention to the preceding pages that I mentioned to you earlier, showing disbursements by checks which are dated partly in December, 1946, and partly in January, 1947, and is the total of those checks shown as \$21,065.64?

A. Yes, that is the figure entered as the total.

Q. And from comparison of the total of the checks issued in December, 1946, and January, 1947, with the total shown for December, 1946, in the summary sheet, are you able to state that the January checks shown in the preceding pages were listed as December expenses in the summary sheet? [2396]

A. Most of the items represent purchases rather than expenses. There are a few expenses included.

Q. But there are payments in 1947 for either purchases or expenses which are included in the summary sheet as December, 1946, payments, isn't that correct?

A. They appear to be 1947 payments, yes.

Q. And in that respect the book that is before you, Exhibit 127, was kept on the accrual method of accounting, was it not?

A. It is still only a record of cash receipts and disbursements. To a very small extent you might

(Testimony of Ray Weaver.)

say an endeavor was made to throw expenses of the next year into the preceding year.

Q. The accrual method of accounting calls for deduction in December, 1946, on account of purchases or expenses incurred in that month which are not paid for until the next year, isn't that true?

A. No——

Q. In other words, if a taxpayer—take a restaurant operator—is on the accrual basis of accounting and he orders supplies and food and so on, which he received in the month of December, 1946, but he does not pay for those until January, 1947, under the accrual method of accounting he would deduct those expenditures as 1946 expenditures, would he not?

Mr. Campbell: Objected to as immaterial.

The Court: You may answer the question.

A. When you say deduct, it is not quite correct because some [2397] of them may be included as purchases for inventory.

Q. He would set up as expenditure made in December, 1946, on the accrual method of accounting, even though they were not paid for until 1947?

A. If they were following a strict accrual method, yes. That is very rare except in cases where good records are kept.

Q. As to these entries in Exhibit 127, that is what was done, isn't it, they entered as expenditures in December, 1946, items that were actually paid for in January, 1947?

A. That appears to be the case with respect to

(Testimony of Ray Weaver.)

these cases. Whether all the other is entered that way or not, I couldn't say.

Q. To the extent that that was done, Mr. Weaver, the books were kept on an accrual method, were they not?

A. To the extent that that was done.

Q. Now I will show you Exhibit 129, which is the exhibit relating to the Menlo Bar operation, and I will ask you if that is the book which you examined in the course of your investigation with respect to that bar operation? A. Yes.

Q. Now I call your attention specifically, Mr. Weaver, to the pages designated "Payments of Cash and Checks Paid Out," with respect to the month of December, 1946, and January, 1947, and I will ask you to examine that in relation to the summary sheet, which is also in this same exhibit, and particularly with respect [2398] to the summary for the month of December, 1946, and ask you whether in this book likewise payments which were made in January, 1947, were included in the summary sheet as of December, 1946, payments?

A. There are entries here paid in January which apparently refers to 1947, which are included in the year 1946.

Q. And the total of the checks listed for December, 1946, and January, 1947, is exactly the same as is shown for the month of December, 1946, in the summary sheet, isn't that right?

A. Those which appear in these sheets here. There are other 1947 checks appearing elsewhere.



(Testimony of Ray Weaver.)

Q. To that extent, that book likewise was kept on the accrual method of accounting, was it not, Mr. Weaver?      A. To that extent, yes.

Q. Now, Mr. Weaver, I am going to ask you to make a computation—and your Honor, after I make the request, if it is in order, we might take a recess to permit him to make it—whatever your Honor wishes. I am going to ask you, Mr. Weaver, to make a computation for me from those two exhibits of the amount of the payments made as shown in each book in January, 1947, which were included in the summary sheets as December, 1946 expenditures.

Mr. Campbell: I object to that as immaterial, incompetent and not within the scope of direct examination, if the Court please. [2399]

Mr. Avakian: I would like to be heard, if your Honor is in doubt.

The Court: I do not think it is within the scope of direct examination.

Mr. Avakian: It relates specifically, your Honor, to the construction of Exhibit 165, the Menlo Club summary sheet.

The Court: I do not doubt at some stage of the proceedings you might have such computation made.

Mr. Avakian: It relates to net worth.

The Court: I know what it is. Objection will be sustained.

Q. Mr. Weaver, in constructing the net worth of a business, which has maintained its books on the basis of accrual accounting, is it not proper account-



(Testimony of Ray Weaver.)

ing procedure to prepare the net worth statement on an accrual basis?

Mr. Campbell: I am going to object, if the Court please, this has been asked and answered; various theories, it seems to me and half a dozen times in the last two days.

The Court: Let me have the question.

(Question read.)

The Court: Objection sustained.

Q. Mr. Weaver, in preparing Exhibit 165, did you set out as any accounts payable any obligations of the Menlo Bar or Tiny's Restaurant, obligations which were paid in January, 1947, but which were entered in the books as December, 1946, [2400] expenditures?

A. There were no liabilities on the Menlo Club net worth at all and they have none on the books.

Q. When you say there are none on the books, are you bearing in mind your testimony that examination of those two books shows that the summary sheets set up as December expenditures items which were not actually paid for until January, 1947?

A. Yes, but that does not mean that all items were included and records adequately to apply to it.

Q. I am asking you to the extent those items are there?

A. In the first place, if the records were adequate, we would not use net worth method in the computation to begin with. Certainly if the records

(Testimony of Ray Weaver.)

were not adequate for cash basis computation of that income, certainly they are not adequate to apply accrual basis of computation, which would involve many factors not entered in any of these records.

Q. As a matter of fact, Mr. Weaver, isn't it true that in computing net income on the net worth method, proper accounting procedure calls for the determination of many matters which are immaterial in the computation of net income on the basis of receipts and disbursements?

Mr. Campbell: Objected to as incomprehensive.

The Court: Will you restate that question, please?

Mr. Avakian: May I have it read?

(Question read.) [2401]

Mr. Campbell: I object to the question on the ground it is incomprehensive.

The Court: Well, we will see if the witness can answer. Do you understand the question, Mr. Weaver? If you can, answer it, if you can't, say you can't.

A. I don't believe it can be answered properly off-hand.

Q. You have stated many times here, Mr. Weaver, the records of the Menlo Club were entirely inadequate. You have before you now two of the books of the Menlo Club for the year 1946, have you not? A. Yes.

Q. And Exhibit 127 refers to the restaurant portion of the Menlo Club business? A. Yes.

Q. And Exhibit 129 relates to the bar portion of

(Testimony of Ray Weaver.)

the Menlo Club business? A. Yes.

Q. And I hand you Exhibit 126, and that relates to the card room portion of the Menlo Club business, does it not? A. Yes.

Q. Now, Mr. Weaver, I believe you testified already that so far as you can determine from your examination, all of the income of the card room shown on the daily poker sheets for the year 1946, were entered in the card room book that is before you as Exhibit 126, isn't that correct? [2402]

A. That all of the income shown in the poker sheets was transferred to these books?

Q. Yes, for the year in question. A. Yes.

Q. You have those poker sheets for several years, have you not?

Mr. Campbell: I submit that has all been asked and answered.

The Court: Yes.

Mr. Avakian: All right, it has been answered.

Q. Now with respect to the Menlo bar operation, which is for the year 1946, as reflected in the book before you, Exhibit 129, there is no evidence in this record that you know of, is there, of the failure to admit any income whatsoever in that bar in the year 1946, from the book before you?

Mr. Campbell: The witness is definitely being asked to search the record for something other than to testify as to facts.

The Court: Let me get the question.

(Question read.)

(Testimony of Ray Weaver.)

The Court: Answer the question.

A. I believe we have some such evidence. Whether or not it is in court, I can't really recall, without reviewing the record.

Q. With respect to Tiny's restaurant portion of the business, [2403] Exhibit 127, for the year 1946, can you refer me to any evidence in the record in this case that shows that any of the income of that business was omitted from Exhibit 127 for the year 1946?

Mr. Campbell: I am going to object again.

The Court: Objection sustained.

Mr. Avakian: It is the same question, your Honor.

The Court: Yes, and I think I made a mistake in overruling the last objection.

Q. What other records of the Menlo Club for the year 1946 were turned over to you for your examination, aside from the three books that are before you, Mr. Weaver? First of all, can you identify records of that business which are in evidence here? A. Now what do you mean?

Q. I will withdraw that. There were also turned over to you, were there not, the check stub books of the Menlo Club, including the bar and restaurant, for the year 1946, were there not?

A. There were a lot of check stubs. Just what period they cover, I do not remember. Some were in 1946.

Q. They included 1946?

A. I don't know whether they included the entire year. I believe they did.

(Testimony of Ray Weaver.)

Q. Everything you asked for in that respect was turned over to you, were they not?

A. As far as I know. [2404]

Q. And there were also turned over to you the cancelled checks of that business for the year 1946, were there not?

A. Yes, I believe it included the year 1946. I think there was one check missing.

Q. There were also turned over to you for the year 1946, the bank statements of the bank accounts relating to that business, were there not?

A. Yes.

Q. And I will show you prosecution's Exhibit 161 for identification, consisting of the carton which was produced here by the prosecution and that contains in it cancelled checks and bank statements obtained by you and your staff from the Menlo Club, does it not?

A. Yes. The account wasn't carried in the name of the Menlo Club, but it is primarily for that business.

Q. And all of the cancelled checks and financial statements relative to the accounts that were used in the Menlo Club business that you requested were turned over to you, weren't they?

A. As far as I know, yes.

Q. Now in addition all poker sheets of the Menlo Club for the year 1946 were turned over to you?

Mr. Campbell: Object—this is the third time counsel has asked that question.

The Court: Yes, not only today, but we heard this several [2405] days ago.

(Testimony of Ray Weaver.)

Mr. Avakian: I don't recall asking.

Q. And with the exception of the few poker sheets which have been introduced in evidence here, you still have in your possession upstairs in this building the balance of the poker sheets for the year 1946, have you not? A. Yes, that is right.

Q. Now do you have in your possession at this time any other records of the Menlo Club relating to the year 1946?

A. We have some copies of Social Security tax returns.

Q. And those were made available to you upon your request? A. Yes.

Q. Now these three books which you have before you, which I believe are Exhibits 126, 127 and 129, contain in them not only a record of the receipts of the Menlo Club business, but they also set forth the disbursements of the business, do they not?

A. For 1946?

Q. Yes.

A. Are you speaking of all three sections of the club now?

Q. Yes.

A. The bar, the restaurant and the card room?

Q. That is right. A. Yes, that's right.

Q. So that these books and these various materials that were turned over to you contain a record of the receipts and they [2406] contain a record of the disbursements, isn't that right? A. Yes.

Q. And in addition the disbursements are sup-

(Testimony of Ray Weaver.)

ported by cancelled checks and the bank statements, are they not?

A. Well, supported to the extent that it was possible, yes. In some cases that isn't full support.

Q. I believe you stated with the exception of one check, so far as you know, all cancelled checks and all bank statements were turned over to you, is that right?

A. Yes. What I mean, the checks were not necessarily explanatory of what was done with the money and I do not believe that all of the checks of all the Menlo Club bank accounts were entered in the books.

Q. But the checks were there, were they not?

A. Yes, with one exception.

The Court: We will take a recess for 15 minutes.

(Jury and alternate jurors admonished and recess taken at 2:45 p.m.)

3:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further

Cross-Examination

By Mr. Avakian:

Q. Mr. Weaver, I will hand you Exhibit 169 for your use in your testimony. Mr. Weaver, Exhibit 169 is a statement prepared [2407] by you of the

(Testimony of Ray Weaver.)

assets and liabilities of the B. & R. Smoke Shoppe for December 31, 1943, 1944, 1945 and 1946, is it not? A. Yes, that's right.

Q. And on the bottom line you have set forth certain amounts designated as net worth for those respective dates? A. Yes.

Q. Now the first item, cash on hand, bank roll, Exhibit 111A, you have stated the amount on December 31, 1943, was 15 thousand dollars, and it is true, is it not, Mr. Weaver, that the only bank roll figure shown in Exhibit 111A is as of January 1, 1943, and that you assumed, in preparing this exhibit, that there had been no change at the end of 1943, in that amount?

A. That's right, because if you didn't use any bank roll at all, it would be to the taxpayer's disadvantage.

Q. If there wasn't any figure at all, there wasn't entry of bank roll item after January, 1943?

A. That is right.

Q. The book didn't purport to show one way or another what it was on January, 1944?

A. No, the book had just one figure, it had "win" or "lose." Was the only record we had of any amount.

Q. Then you assumed further, did you not, that the bank roll remained exactly the same on December 31, 1944, as it had been on January 1, [2408] 1943?

Mr. Campbell: That was all gone into on voir dire.



(Testimony of Ray Weaver.)

The Court: Well, he may go into it on cross-examination.

A. That is right, because to make that assumption would result in no additional income in that period.

Q. As a matter of fact, if you had not made that assumption for 1944, and had treated the bank roll figure in 1944 as zero, it would have been favorable to the taxpayer?

A. If I thought the business could operate without a bank roll, yes.

Q. Now for the year 1945, "Cash on Hand Bank Roll," Pritchett testimony, 20 thousand dollars at December 31, 1945. I am going to call your attention to the attention of Mr. Pritchett, pages 1524 and 1525 of the transcript, where he stated, under direct examination by Mr. Campbell, as follows:

"Q. Now at the time you left the business at the end of 1945, do you recall the amount of cash on hand? A. No. I do not.

"Q. What is your best recollection?

"A. I think it was around five thousand dollars cash.

"Q. Do you recall whether or not there were also on hand at that time any accounts receivable?

"A. Yes, sir. [2409]

"Q. What was the amount?

"A. I don't recall what it was.

"Q. What is your best recollection?

"A. I believe around 15 thousand outstanding."

(Testimony of Ray Weaver.)

Is that the testimony of Mr. Pritchett to which you refer on Exhibit 169?

A. Yes, I believe it is. There may be more to it than that. I can't tell without reviewing the record.

Q. So that although you state on your exhibit that there was 20 thousand dollars, Mr. Pritchett's testimony, upon which you rely, is that there was only five thousand cash and 15 thousand accounts receivable?

A. There was prior testimony that markers were treated as cash, as part of the bank roll.

Q. Can you refer me to that portion of the testimony? A. Not right now, no.

Q. Have you made any notes anywhere in preparing this exhibit?

Mr. Campbell: Objected to as argumentative. The record speaks for itself.

The Court: Sustained.

Mr. Avakian: If this was supposed to be a summary, can't he point to the place in the evidence where it is? We haven't been able to find it. We have read it carefully with this thought in mind. May I make that request?

The Court: I am not going to ask this witness to search [2410] through two or three thousand pages in this transcript.

Mr. Avakian: He must have done it already.

The Court: I know.

Q. Right now you are not able to refer me to any of the testimony to that effect, is that correct?

A. Outside of what you have stated to be Mr.

(Testimony of Ray Weaver.)

Pritchett's testimony. It wouldn't make any difference whether you had accounts receivable 15 thousand and 5 thousand on hand, it would still be the same figure.

Q. I call your attention to Mr. Kyne's testimony on page 878, under examination by Mr. Campbell, as follows:

"Q. Will you explain what you mean by marker?"

"A. One who bets and does not pay in this respect."

Now, Mr. Weaver, you said that 15 thousand dollars accounts receivable, which you have treated as cash, has been treated as cash because there has been some testimony, which you can not now point to, that the markers were treated as cash in the bank roll, is that correct? A. Yes, that's right.

Q. Now, Mr. Weaver, in a horse betting business, in which a person who bets and loses, fails to pay up, but instead puts in a marker, that marker would be treated as income on the accrual method of account, but not on the cash method of accounting, isn't that true? [2411]

A. No, I would say the existence of the marker would be the equivalent of the advance of that much cash to that particular individual. Whether by furnishing cash before the bet to him or whether furnishing it after he makes the bet, it would be cash in either case. If you want to classify part of this item as accounts receivable and the rest as cash, it makes no difference in the sum total of the figures, if it pleases you.

(Testimony of Ray Weaver.)

Q. Well, in the preparation of asset and liability and net worth statements by certified public accounts, is it not proper accounting procedure, Mr. Weaver, to show cash as an item separate from the accounts receivable?

A. I would say it depends on the business. My recollection of the testimony is that these markers were treated as the equivalent of cash. They were maintained in the bank roll, of which no record was kept anywhere and the partners involved, one of them I couldn't talk to, the others had no recollection of the size of the bank roll, so the only thing that we could depend on was the custom of conducting a business of this character.

Q. You do have specific testimony five thousand is cash and 15 thousand accounts receivable, do you not?

A. Yes.

Q. Is it not proper accounting procedure when a certified public account prepares statements of assets and liabilities and net worth for them to show cash separately from accounts [2412] receivable when they do have information as to the amount of the item?

Mr. Campbell: Objected to as asked and answered.

The Court: Objection sustained.

Mr. Avakian: I do not recall the answer.

The Court: The last question.

Mr. Avakian: It wasn't answered. He didn't state whether that was or was not proper accounting procedure. May we have the question read?

(Testimony of Ray Weaver.)

(Previous question and answer read.)

The Court: Objection sustained.

Q. Mr. Weaver, bearing in mind Mr. Kyne's testimony that the meaning of marker is "one who bets and does not pay in this respect," is it not true that under proper accounting procedure the amount of that bet which is not paid would not be considered as income at that time under the cash receipts and disbursements method of accounting?

Mr. Campbell: Objected to as asked and answered.

The Court: He may answer the question.

Mr. Campbell: The further objection it is assuming a fact not in evidence. In the first place, I don't believe the witness would be bound by Mr. Kyne's definition. Secondly, I don't believe that was Mr. Kyne's entire definition. He stated among other things the so-called partners took out money and put in markers, as well as patrons to whom money was [2413] advanced.

The Court: The objection this witness would not be bound by Mr. Kyne's definition is a good objection. Objection is sustained.

Mr. Avakian: I am not saying he is bound.

The Court: It would have the same effect.

Mr. Avakian: I am asking him to make an accounting appraisal of the testimony.

The Court: Based on Mr. Kyne's definition.

Mr. Avakian: But it is in the testimony, in evi-

(Testimony of Ray Weaver.)

dence, and the only evidence on that point by Mr. Kyne.

The Court: The ruling will stand.

Q. Mr. Weaver, isn't it true that, showing the cash separately from accounts receivable on account of markers, would have a material bearing on the construction of the net worth of the B. & R. Smoke Shoppe if you constructed that net worth on cash receipts and disbursements method?

A. Everything has a material bearing. I don't get the point of your question.

Q. You don't understand the question.

Mr. Campbell: I object to that.

The Court: He said he didn't get the point.

Mr. Avakian: It means he doesn't understand, your Honor. I don't know what he means if he doesn't mean that. Let me see if I can rephrase it so you can understand it. [2414]

Q. In the preparation of net worth statements for a business which has accounts receivable consisting of money owed to the business on account of transactions with that business, for which they have not yet been paid, does it make a difference in the computation of the net worth whether you use the cash receipts and disbursements method rather than the accrual method?

A. As I explained before, we only use the net worth method when records are inadequate. If the records were adequate enough to use the accrual method, certainly you would not resort to the net worth method. Furthermore, whether or not ac-

(Testimony of Ray Weaver.)

counts receivable should be taken into consideration depends entirely upon the manner in which those accounts receivable arose. Now if they arose from advances of cash to another individual, whether that advance is made either before or after the occurrence of another transaction, I can see no distinction. It just replaces one asset, cash with another asset, accounts receivable.

Q. Have you finished? A. Yes.

Q. Now to the extent that accounts receivable consists of money owed to the business by a customer on account of a business transaction, for which the customer has not yet paid the business, would you not say, as a certified public accountant, that as to that kind of transaction, the [2415] account receivable would not be income on the cash receipts and disbursements method?

A. It depends entirely upon the nature of the transaction. There is not anything in the records of the B. & R. Smoke Shoppe to indicate the nature of any of these transactions except markers and advances to partners and advances to others. There is nothing to indicate any amount which would reflect any income that had been reported.

Mr. Avakian: May we have my question read?

(Question read.)

Q. Give me a direct answer.

Mr. Campbell: I submit the question has been answered.

The Court: The question has been answered.

(Testimony of Ray Weaver.)

Q. Mr. Weaver, by using the cash figure of 20 thousand dollars in your Exhibit 169, instead of the amount of cash of five thousand dollars testified to by Mr. Pritchett, you have increased the net worth of that business by 15 thousand dollars, have you not?

A. Yes. If I hadn't put it that way, we would put it under accounts receivable.

Q. Now with respect to the same figure of 20 thousand dollars for the year 1946 in Exhibit 169, you again state that the authority for that is Mr. Pritchett's testimony. I call your attention to the following testimony of Mr. Pritchett, first on page 1512 under direct examination by Mr. [2416] Campbell:

"Q. Do you recall approximately when it was that you left in 1946?

"A. I left about the end of '45 and I was back there for a few days the end of March or middle of March.

"Q. How long did you remain at that time?

"A. Oh, about a week.

"Q. When you left in March, was the business still operating?      A. No, sir.

"Q. And that was March of '46?

"A. That's correct."

And then again to Mr. Pritchett's testimony on cross-examination, beginning at page 1538:

"Q. Then as I understand, during the year 1946, you just went back to work there for about a week?

"A. Correct.



(Testimony of Ray Weaver.)

"Q. Do you recall what time of year that was?

"A. About the middle of March.

"Q. About a week and then you left the place again? A. That's right."

Q. Now can you refer me to any testimony of Mr. Pritchett's other than what I have read to you, with respect to the amount of the bank roll that might have been on hand with the B. & R. Smoke Shoppe on March 31, 1946? [2417]

A. There is no record of the bank roll for that date in any record; no record of the cash in the safe on Mason Street or any of the safe deposit boxes; we couldn't talk to Mr. Remmer to determine the amount of the bank roll, the other partners had no recollection of the amount of the bank roll, and we knew in a period of five months there was a gross business of some five million dollars immediately succeeding 1946, so that would appear that the bank roll continued at 20 thousand wouldn't be unreasonable.

Q. Does that complete your answer?

A. Yes.

Q. (By Mr. Avakian): Your Honor, my question was referring to the nature of the testimony. I ask that the answer be stricken as not responsive, and the question be read to the witness.

The Court: The answer may go out.

(Question read.)

Q. Will you answer the question?

A. The bank roll—

(Testimony of Ray Weaver.)

The Court: Referring to testimony, he means oral testimony.

Q. You say Mr. Pritchett's testimony in your exhibit. Can you refer to it?

A. The bank roll at the end of 1946 was carried over at the same figure used at the end of 1945 for the reasons I stated. [2418]

The Court: It can be answered yes or no.

A. No.

Q. Now, Mr. Weaver, during your examination yesterday regarding Exhibit 125C and 140, you made the statement that the records of the Menlo Club, although kept in a special room in the Bureau of Internal Revenue offices in San Francisco, might at times have been returned to the representatives of the Menlo Club for short periods. Do you recall that subject?

A. Yes, whenever they requested records, we returned them. Whether or not these were included, I can't recall.

Q. It is true, is it not, when you and the other members of your staff obtained those records, you agreed to return them upon request?

A. Yes, and we always did.

Q. Isn't it true, Mr. Weaver, that you, and the other members of your staff, refused to return those records to the defense when the defense requested the opportunity to examine them in October of 1951, for the purpose of preparing for this trial?

Mr. Campbell: I am going to object to that question, if the Court please, as being incompetent, im-

(Testimony of Ray Weaver.)

material and it is a matter upon which the Court has heretofore ruled.

The Court: What ruling of the Court do you allude to?

Mr. Campbell: I judge counsel is apparently referring [2419] to some records other than those produced here, because the evidence here shows that these records were returned to the defendants and the receipt of Mr. Semenza secured some time early in 1949. Now he is referring apparently by this question to some other records.

Mr. Avakian: Your Honor, here is a box of records produced by the prosecution during the trial, relates to material business which we were trying to have an opportunity to examine and the prosecution refused to let us examine; although Mr. Weaver says they promised to make available and always did make available, the fact is they did not and Mr. Weaver knows that is so because he is the party who refused.

Mr. Campbell: This matter should be in the absence of the jury, but this is a matter which has been before the Court and upon which the Court has made rulings.

The Court: We will excuse the jury.

(Jury and alternate jurors admonished and excused at 3:30 for five minutes.)

(In the absence of the jury.)

(NB 338 pp. 54-56.)

3:35 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further [2420]

Cross-Examination

By Mr. Avakian:

(Last question read.)

Mr. Campbell: I think the Court had not made its ruling prior to the jury going out.

The Court: Objection is sustained to the last question.

Q. Mr. Weaver, you testified at length on cross-examination to the exhaustive investigation which you and the members of your staff made in attempting to determine the assets and liabilities of Mr. Remmer during the period covered by your investigation. Let me ask you this, Mr. Weaver—and it is a preliminary question, will you please answer yes or no—during the five years covered by your investigation, did you follow up every lead which you found that might lead to the discovery of assets or liabilities of Mr. Remmer?

A. To the best of my ability, yes.

Q. Now in the course of your investigation, you made an examination, did you not, of prosecution's Exhibit 146, which is the ledger of Cal-Neva, Inc.,

(Testimony of Ray Weaver.)

and particularly of the account of Elmer Remmer, designated as Account 10?

A. Yes, that is right.

Q. And let me call your attention, Mr. Weaver, to an entry in that account of E. Remmer, dated November 30, 1939, entitled "Placer County Taxes." Did you make any investigation to determine whether Mr. Remmer owned any property in Placer County, with respect to which Cal-Neva corporation paid taxes [2421] and charges to his account?

A. I can't recall whether I did or not.

Q. Did you search the records of the county recorder of Placer County?

A. No, I did not personally but it might have been done by some one else, I can't recall.

Q. As I recall, in your statement of the various official records you searched, you made no reference to Placer County. Can you tell us whether you did find that Mr. Remmer owned any property in Placer County?

A. No, I did not.

Q. I call your attention also to another entry in that account dated November 30, 1942, entitled "Placer County Taxes." Did you make any investigation with respect to that through the cancelled check that was used for that purpose or any other way, to determine whether Mr. Remmer at that time owned any property in Placer County?

A. Is that the \$4.45?

Q. That is right. Check was \$4.45.

A. I don't recall doing it myself. It may have been done by somebody else, or it may have ap-

(Testimony of Ray Weaver.)

peared the amount of taxes involved indicated real property of no great value.

Q. In other words, you might have assumed that the value of the property was too small for you to bother with in your investigation, is that [2422] right?

A. That is possible. Also that in 1940, we had a statement, under oath, that Mr. Remmer gave in Stockton, relative——

Mr. Avakian: Just a moment—was that statement given by Mr. Remmer?

A. Mrs. Remmer, relative to community——

Mr. Avakian: I will ask the witness not go into the contents of any statement.

(Question read.)

Mr. Campbell: He has inquired why, if he did not, he did not make the investigation.

The Court: I think the question goes to the reason why none was made. Let us have the answer.

(Answer read.)

Mr. Avakian: I followed up by asking if he might have thought the value of the property was too small to bother.

Mr. Campbell: And he answered what he had to go on.

(Question and answer read.)

Mr. Campbell: I submit he might explain that.

The Court: That part may remain in.

Q. Mr. Weaver, can you determine with consul-

(Testimony of Ray Weaver.)

tation with other members of your crew or examination of your papers and files in this matter, that the official records of the county recorder of Placer County show that Mr. Remmer purchased some real property in that county on June 8, 1937, and sold it on September 16, 1946? [2423]

Mr. Campbell: I am going to object to this. That is counsel's testimony. He said he personally did not make any examination, he didn't know if others did. Counsel now asks if he will ascertain what he says the county records show.

(Question read.)

The Court: Answer yes or no.

Mr. Campbell: He asked him if he could determine from examination of his crew.

Mr. Avakian: The members of his staff or from his records.

The Court: You can answer the question yes or no.

A. No.

Q. You can not determine, that is your answer?

The Court: That is his answer, yes.

Q. Very well. Now I call your attention further to an entry in this same account, No. 10, of E. Remmer, Exhibit 146, dated April 30, 1946, and entitled "Mayris Chaney Loan" in amount of \$2500, entered under charges. Did you notice that entry in your examination in this case?

A. May I refer to my working papers on this?

A. Yes, I did.

(Testimony of Ray Weaver.)

Q. You did make an inquiry about that?

A. Not an inquiry?

The Court: Wait a minute—he answered the question once. [2424]

Mr. Avakian: May I strike the last question?

Q. You did notice that, Mr. Weaver. Did you make any investigation with respect to that matter?

A. I looked at the explanation contained in the Cal-Neva records which said to charge E. Remmer with cash received from Mayris Chaney \$2500 in payment of his loan to the company and to write off uncollectable loans, which refer to a different part of the same entry, not pertinent here.

Q. So you found in your investigations that the entry represented repayment of loan by Mayris Chaney?

A. Yes and that the cash which, according to the explanation of this entry, should have gone to Cal-Neva, went to Mr. Remmer personally instead; therefore, he was charged with that amount on the books of Cal-Neva.

Q. Did you make any investigation to determine when that loan had been made to Mayris Chaney?

Mr. Campbell: Objected to as immaterial. This is apparently advance of Cal-Neva, which mistakenly was repaid to Mr. Remmer and then charged to him.

The Court: He can answer the question. Do you understand the question?

A. Yes. I believe I discussed that with Mr.



(Testimony of Ray Weaver.)

Semenza and I don't know that he could give a satisfactory explanation as to the exact date.

Q. Now, Mr. Weaver, in the computation of net income on the net [2425] worth basis, it is important, is it not, to take into account all real property owned by the taxpayer at the beginning of your net worth period and sold by him during the period?

A. Yes. I don't recall any sale being reported in any of his returns.

Q. And is it also important to determine, in order to make a proper computation—withdraw that.

Is it important, in making computation, to determine facts with respect to any money which the taxpayer either borrows from others or loaned to others during the period covered by the net worth computation? A. Yes.

Q. Did you, during the five years that you were investigating this case, make any investigation of the repayment to one J. B. Scarlett, also known as James Sullivan, by Mr. Remmer in 1949, of the sum of 25 thousand dollars borrowed from Mr. Scarlett by Mr. Remmer in a prior period?

Mr. Campbell: Objected to as assuming something not in evidence.

Mr. Avakian: The fact is in evidence.

The Court: I remember some testimony.

Mr. Campbell: I do recall Mr. Woodburn mentioned some money paid in 1949. But I do on the ground that it has not been shown that any such loan existed during the period which we have in

(Testimony of Ray Weaver.)

consideration here. Mr. Woodburn stated, if I recall, [2426] when the money, if it was money, had been advanced from Mr. Scarlett. I believe when Mr. Adler made his payment in purchasing Cal-Neva from Mr. Remmer in 1948 or 1949, that Mr. Scarlett collected that sum back.

Mr. Avakian: I am only asking if he made any investigation of the matter.

The Court: Answer the question.

A. The only investigation I recall making in connection with the loan from Mr. Scarlett, or the loan made——

Mr. Avakian: I ask that be stricken because it is not responsive as to whether he investigated a repayment to Scarlett by Remmer.

The Court: He may answer the question.

(Answer read.)

Mr. Avakian: Just a moment——

The Court: He may proceed.

Mr. Avakian: May the witness be instructed to limit his answer to the Remmer-Scarlett transaction? May we have the question read?

The Court: Proceed.

A. The only investigation of a loan made to Scarlett was the sum of, I believe, \$25,000 borrowed by Captain Devine of the San Francisco——

Mr. Avakian: That is not the Remmer-Scarlett transaction. The witness is trying to bring in something for a [2427] prejudicial purpose, has no relation to Mr. Sullivan's loan——

(Testimony of Ray Weaver.)

The Court: Let me have the answer.

(Answer read.)

The Court: The answer may go out.

Mr. Avakian: I move the jury be admonished.

The Court: Of course, I have told the jury, I believe they understand, that they are to——

Mr. Avakian: I believe the witness——

The Court (Interceding): Do you want to take my place on the bench?

Mr. Avakian: I thought you were through. I am sorry.

The Court: I have instructed this jury many times, when it comes to decide this case they are to confine their decision and deliberations to and concerning only the evidence brought out by the mouths of witnesses on this stand and from documents in evidence and not the remarks of court, remarks of counsel or any other matter should be considered, but the jury, in deciding this case, shall accept the evidence, both oral and documentary.

Now you may proceed.

Mr. Avakian: Thank you, your Honor.

Q. Mr. Weaver, did you investigate the escrow records of the First National Bank in Reno, Nevada, relative to the sale of Cal-Neva Lodge by Mr. Remmer to Sanford Adler, with respect [2428] to an assignment shown in those escrow records, dated October 2, 1948, from Mr. Remmer to Mr. Scarlett of 25 thousand dollars of the funds coming to Mr. Remmer in that escrow transaction?

(Testimony of Ray Weaver.)

A. That was connected with the answer I attempted to give.

Q. Did you examine those escrow records?

A. Yes.

Q. And did you find that in those escrow records there was an assignment dated October 2, 1948, signed by Mr. Remmer, assigning to Mr. Scarlett 25 thousand dollars of the funds which were to come to Mr. Remmer in connection with the sale to which that escrow related?

A. Yes; without looking at the records I wouldn't remember the amount. I do remember Mr. Remmer was supposed to have guaranteed the loan.

Q. Do you remember that there was an assignment in that escrow file from Mr. Remmer to Mr. Scarlett?

Mr. Campbell: I submit the records are the best evidence.

A. I do not recall, no.

Mr. Avakian: He does not recall, that is the answer.

Q. Now, Mr. Weaver, any loan which Mr. Remmer might have owed to Mr. Sullivan at the end of 1946 would have a material bearing in determining Mr. Remmer's net income for the year 1946 on net worth method, would it not?

Mr. Campbell: Objected to as assuming a fact not in [2429] evidence, any loan owing from Mr. Remmer to Mr. Sullivan.

The Court: Objection sustained.

Mr. Avakian: No further questions, with this

(Testimony of Ray Weaver.)

reservation, may Mr. Weaver remain available for further possible examination after the other agents have identified certain documents.

The Court: We do not know yet whether there is any redirect examination. There may be. I will ask Mr. Weaver to remain until excused by both sides.

(Jury and alternate jurors admonished and recess taken at 4:00 o'clock.)

February 1, 1952, 10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. WEAVER**

resumed the witness stand on

Redirect Examination

By Mr. Campbell:

Q. Mr. Weaver, during the course of your cross-examination and particularly yesterday, you were asked various questions concerning the records of the Menlo Club and of the three Menlo businesses, that is to say, the Menlo Club as referring to the card room, the Menlo Bar and Tiny's Waffle Shop. Now directing your attention to the bank account under the name of the Menlo Club, which is here in evidence, and which was the bank account under the name of Menlo Club in the Bank of America, Day and Night Branch, which, as I recall was opened in

(Testimony of Ray Weaver.)

September or October, 1946—pardon me, is that correct?      A. Yes, that is correct.

Q. I will ask you whether or not that bank account, or any reference thereto, appeared in the books of the Menlo Club?

A. No, the account did not appear in the books at all.

Q. And with particular to two checks which are here in evidence, being plaintiff's Exhibit 115, check drawn on the Menlo Club account as of November 7, 1946, in amount of 65 thousand dollars, and plaintiff's Exhibit 120, a check in amount of \$16,005.50, also drawn on the Menlo Club account at the [2431] Bank of America, I will ask you whether or not, in the records which you examined of the Menlo Club and which are here in evidence, was any entry or notation made of those two checks?

A. May I see the Menlo Club book?

Q. Yes.

A. I think I will need both the 1946 book and the 1947 book as to partners' accounts.

Q. I hand you plaintiff's Exhibits 125 and 126, which are denominated "Menlo Club 1947" and "Menlo Club 1946" respectively.

Mr. Avakian: To save time, your Honor, we will stipulate that they are not entered in the books.

Mr. Campbell: Very well, we will accept the stipulation.

Q. Now, Mr. Weaver, during the course of your examination and investigation, were you shown at any time any books for the Menlo Club deferring to

(Testimony of Ray Weaver.)

the card room for the year 1945? A. No, sir.

Q. Were you shown at any time, or did you see at any time, any of the so-called poker sheets for the Menlo Club for the year 1945? A. No, sir.

Q. Now with regard to the records which you saw for the Menlo Club for the years 1946 and 1947, which you have examined there, and the books and records of the other enterprises which are in evidence here, will you state whether or not any record was [2432] maintained relative to transfers of funds from one enterprise to another?

Mr. Avakian: May we have the question read?

(Question read.)

Mr. Avakian: I am not certain what Mr. Campbell means by reference to other enterprises. Do you mean all the other businesses, like 110 Eddy and so on?

Mr. Campbell: Yes.

Mr. Avakian: That is assuming something not in evidence. There is no evidence here that they were transferred.

The Court: Objection overruled.

A. No such record was kept.

Q. Now with regard to the Menlo Club records, that is to say, for the 1946 records here in evidence of the Menlo Club, were any accounts maintained of assets and liabilities other than the Schriber account and the capital accounts?

A. No, sir, those were the only ones.

Q. Now with regard to your examination of such

(Testimony of Ray Weaver.)

records as you did examine of the Menlo Club—I believe you testified there were no records for 1945, is that correct?      A. For the card room?

Q. Yes.      A. No records for 1945.

Q. Now with regard to the records which you examined for 1946 of the club room, were all the receipts of the club room deposited [2433] in a bank account or bank accounts?      A. No.

Q. Was it possible, or were you able to, Mr. Weaver, reconcile the bank account or bank accounts with the poker sheets?

A. No, I was not.

Q. Did you examine, or were you shown, or do you know of the existence of any record relative to the amount of cash maintained in safes or safety deposit boxes with regard to the Menlo Club or with relation to any of the businesses?

Mr. Gillen: Your Honor, it appears counsel is going into matters that were introduced in the prosecution's case in chief from other witnesses. This is repetitious. It is not harmful, but it is already in the record. Witnesses such as Mr. Kyne and Mr. Maundrell testified that money was placed in the safe deposit boxes and so on. I think this is just repetitious and a waste of time. I do not think it is proper redirect, it is already in the record, already established.

The Court: Objection overruled. Read the question.

(Question read.)



(Testimony of Ray Weaver.)

A. I know of no such record.

Q. Now you were questioned yesterday relative to certain—or it may have been the day before—relative to certain payments made to Maundrell and charged to the account standing in his name in the Menlo Club books. Did your examination disclose whether any of the other persons, whose names appear therein [2434] with credits shown to their accounts and other than the defendant, Elmer Remmer, drew or received any monies other than for tax payments?

Mr. Avakian: Just a moment, your Honor, we object to that question on two grounds, your Honor. First of all, it is not proper redirect because the cross-examination related only to Maundrell, there was no questioning as to accounts of any other partner, and so it is not within the scope of cross-examination. Secondly, the question calls for information obtained by the witness in the course of his examination, which is beyond the scope of the evidence in this case and in that respect, even if the question was proper on redirect, it should be limited to the evidence that is in this case and not to other matters that may be speculation and hearsay.

Mr. Campbell: As to this latter objection, limit your answer, Mr. Weaver, to the books and records which you examined.

Mr. Avakian: And then there is the first objection also.

The Court: It will be overruled. You may an-

(Testimony of Ray Weaver.)

answer the question as modified. Now read the question.

(Question as modified read.)

A. Other than tax payments, there is no indication that any of the partners drew any money other than Mr. Remmer and Mr. Nelson.

Q. Mr. Nelson? [2435] A. Yes.

Q. Now your attention is directed—

The Witness (Interrupting): And Mr. Maundrell, of course.

Mr. Campbell: Yes, I eliminated him in the question.

Q. Your attention is directed to the fact that there has been some evidence in the record that parties by the name of Fricker and Ditto withdrew from the enterprise as of December 31, 1945. First, let me ask you, are there capital accounts set up in the records of the Menlo Club which are before you in the names of Fricker and Ditto?

Mr. Avakian: Object to that as not proper redirect, because it does not touch upon anything that was even remotely mentioned in cross-examination.

Mr. Campbell: I am going into this question of payments which were made to the persons indicated in these capital accounts of the partners, if the Court please, and Mr. Avakian went to some length as to payments made to Mr. Maundrell.

Mr. Avakian: Your Honor will recall Mr. Maundrell's was the only account. I was stopped in the course of questioning as to Mr. Maundrell's account by Mr. Campbell's objection and your Honor ruled

(Testimony of Ray Weaver.)

in sustaining Mr. Campbell's objection that I couldn't go further into that line of questioning and questioning of Mr. Maundrell's account was stopped in the middle by Mr. Campbell's objection and your Honor's ruling, and there was no questioning what-even in respect to the other [2436] partner's accounts.

The Court: Objection overruled. You may answer the question.

A. The books show capital accounts for both Mr. Ditto and Mr. Fricker.

Q. As of December 31, 1945?

A. Yes; stated this way, "Balance 1945" and then there is an amount entered in the balance account which from the nature of the following entries, appears to be a credit balance of that date. There is no indication of anything preceding that date.

Q. Other than money debited against those accounts for taxes for the year 1945, were any further payments to them or debits to them entered in those records? A. No, sir, that's all.

Q. Now in your cross-examination yesterday, Mr. Avakian directed your attention on the books of Cal-Neva to some taxes paid in 1939, I believe, or 1941 or '42——

Mr. Avakian: '42.

Q. ——on some real property, apparently in Placer County, California, by Cal-Neva and charged to Mr. Remmer's account, drawing account, and Mr. Avakian, by his questioning, asked you if you were

(Testimony of Ray Weaver.)

aware that that property had been owned and was sold in the year 1946. Do you recall those questions?

A. Yes, I do. [2437]

Q. I am going to direct your attention to plaintiff's Exhibit 5, the return of Elmer Remmer for the year 1946, and ask you to examine it and state whether or not in the return for that year Mr. Remmer reported the sale of any real properties?

A. No, sir, there is no such sale on the return.

Q. And in connection with your examination and investigation, I will ask you if you found, Mr. Weaver, any evidence of capital gains on the sale of property, either real or personal, by Mr. Remmer during the years 1944 to 1946 inclusive?

Mr. Avakian: May we have the question?

(Question read.)

Mr. Avakian: We object on the ground again it calls for something that he apparently might have run into in his examination as distinguished from evidence, and it could then call for hearsay, speculation, opinion, or other matters.

Mr. Campbell: This can be answered yes or no.

The Court: What is your objection?

Mr. Avakian: It should be limited to the examination of evidence here, not anything he might have thought or run into or hearsay.

Mr. Campbell: If his answer is yes—we probably have to hear the answer first.

The Court: Have you finished your objection?

Mr. Avakian: Even though the answer is yes or

(Testimony of Ray Weaver.)

no, it is still improper if it is based upon anything not in the [2438] record here.

The Court: Objection overruled. Answer the question.

Mr. Avakian: May he answer yes or no then?

Mr. Campbell: Answer yes or no.

A. May I have the question?

(Question read.)

A. No.

Q. Now, Mr. Weaver, you were examined yesterday at some length relative to an exhibit, to a schedule which you prepared, concerning the net worth of the B. & R. Smoke Shoppe, which is plaintiff's Exhibit No. 169. Now in connection with your examination into the affairs of the B. & R. Smoke Shoppe, did you have before you any records other than those in evidence here, with the exception of the diary book for 1944, of which there is a transcript in evidence?

Mr. Avakian: May that be answered yes or no, your Honor?

A. You mean confined to the years we are concerned with here?

Q. That is correct.

A. No, that is all I have.

Q. Relative to the years 1944 to 1946, did you have before you, or were you shown, any records of the gross business of the B. & R. Smoke Shoppe?

A. No, sir.

Q. Were you shown, or did you have before you,

(Testimony of Ray Weaver.)

any records purporting to be the capital accounts of the partners in that [2439] business?      A. No.

Q. Did you have before you, or were you shown, any record of the assets and liabilities of that business?      A. No, sir.

Q. Were you shown, or did you have before you, any record of the expenses of that business?

A. No, sir.

Q. Were you shown, or did you have before you, any record of cash in safe or safety deposit boxes pertaining to that business?

Mr. Avakian: Objected to—that was asked and answered a few minutes ago, your Honor.

The Court: Objection will be overruled.

A. No.

Q. Now, Mr. Weaver, another matter was referred to yesterday. Your attention was directed to an entry in the books of Cal-Neva, Inc., in the drawing account of Elmer Remmer, relative to some entry in that account referring to an advance or loan to an individual by the name of Chaney, and I believe you stated what the entry made in the books stated concerning that transaction. Now it was not clear in my mind what that transaction was. Will you explain please?

Mr. Avakian: First of all, before he is permitted to answer, may he be instructed to answer whatever is in evidence [2440] and not speculation and hearsay?

Mr. Campbell: Yes.

Mr. Avakian: And secondly we object on the

(Testimony of Ray Weaver.)

ground the record speaks for itself. Whether Mr. Campbell understands the records or not, is immaterial. He has been making objections to my questions on that same ground, which your Honor sustains. He can read the testimony to him.

The Court: In regard to your reference about objections made by Mr. Campbell, I overruled many objections of Mr. Campbell's on the ground the record was the best evidence. I want to just call your attention to that. The objection is overruled. You may answer the question.

A. According to Cal-Neva books, that represented an advance to that particular individual.

Q. By whom?

A. By Cal-Neva. The advance subsequently was repaid to Mr. Remmer personally, who retained the money and then it was then charged against his account.

Q. Just as any other drawing or advance by Cal-Neva to Mr. Remmer?

A. Yes, it actually represented an advance from Cal-Neva to Mr. Remmer.

Q. Now, Mr. Weaver, various questions were propounded to you regarding various theories of accounting by accrual basis and by [2441] cash basis, hybrid basis, and so on. Will you state, Mr. Weaver, in as simple terms as you can, what is meant by net worth method of ascertaining a person's income?

Mr. Avakian: Your Honor, we object to that question as calling for the witness' interpretation of

(Testimony of Ray Weaver.)

law. I call your Honor's attention to the fact that upon rulings from the bench on Mr. Campbell's objection, the cross-examination was not permitted to go into that matter.

The Court: Objection is overruled.

A. Well, briefly, the net worth method tends to determine what the person owned at one particular date and then make a comparison what he owns at another date, the difference between the two representing an increase or decrease in his net worth and correspondingly an increase or decrease in his income, with this qualification—that we must take into account what is expended for nondeductible purposes, such as federal income tax and living expenses, which, if they would not have been expended, would still be on hand in the period and would reflect a further increase in his net worth.

Mr. Gillen: May it please the Court, in view of your Honor's ruling on this matter, I should like, at the earliest opportunity, to have an opportunity to present to your Honor some matters of law pertaining to cross-examination of expert witnesses, if your Honor will designate the time.

The Court: There is nothing before the [2442] Court.

Mr. Gillen: I request the opportunity to take it up at some other time in the absence of the jury.

The Court: The request is denied. Whenever a matter comes up before the Court on an objection and the Court deems that the question is of such a nature that the Court has a limited knowledge of



(Testimony of Ray Weaver.)

the law and feels it is necessary to have argument, I will be glad to hear it, but when I do not feel that way about an objection, I am not going to take the time and send the jury out.

Mr. Gillen: I am not asking about the objection. I am asking the opportunity to take it up at some recess——

The Court: There is nothing before the Court. Every objection that has been made in the course of this trial has been ruled upon.

Mr. Gillen: I am not talking about the objection. I am asking an opportunity to present a matter your Honor does not know what it is.

The Court: Then I am not going to grant it.

Mr. Gillen: Without knowing what I wish to present?

The Court: Of course not. I am not going to sit and listen to some matter that I don't know if it refers to this case or not.

Mr. Gillen: Your Honor will never know until I present it. [2443]

The Court: I will try to get along without the information.

Q. Mr. Weaver, having complied to that practice and then arriving at the taxable income, do you also take into consideration and give effect to receipts of a nature which are not taxable? A. Yes.

Q. Those would be receipts of what nature?

A. For example, they might be gifts or inheritances, which would tend to increase the net worth at the end of one period but should not be taken

(Testimony of Ray Weaver.)

into account because they are not taxable. They should be eliminated. Also under the tax law itself, certain capital gains are taxable only to a certain extent and the portion of those gains which are not taxable should be eliminated.

Q. And it is a part of the practice to eliminate those in arriving at what portion of the income is taxable net income, is that correct? A. Yes.

Mr. Campbell: You may recross-examine.

Recross-Examination

By Mr. Avakian:

Q. Mr. Weaver, do you still have before you the check for 65 thousand dollars and the check for \$16,005.50, concerning which you were questioned by Mr. Campbell? A. Yes, I have. [2444]

Q. I call to your attention first, Mr. Weaver, the notation on Exhibit 115, which is the 65 thousand dollar check to Mr. Kyne, and you note, do you not, that except for the signature everything inserted on the check form is in typewriting?

A. Yes, that's right.

Q. And there is also typed on the face of that check the statement, "Loan to Elmer Remmer," is that correct? A. Yes, that is right.

Q. And this check with that notation on it was maintained in the office of the Menlo Club at the time you obtained the records of the Menlo Club, was it not?

A. Yes, but it was not reported on the books.

(Testimony of Ray Weaver.)

Q. The check itself was there, is that right?

A. Yes.

Q. And the check was turned over to you when you requested the records? A. That is right.

Q. And at the time it was turned over this notation, "Loan to Elmer Remmer," was on the check?

A. Yes.

Q. And as an accountant, Mr. Weaver, is the notation on the check, "Loan to Elmer Remmer," of exactly the same significance that the identical notation in a book would have?

A. Not in view of the relationship of Mr. Remmer to the Menlo Club. [2445]

Q. If the Menlo Club had maintained a check register of this account and for this particular check had made an entry in the check register showing the date of the check, amount of 65 thousand dollars, and the notation, "Loan to Elmer Remmer," would that have had any further significance to you, as an accountant, than what is already on the check itself?

A. Making no assumptions, the two would have the same meaning.

Q. I call your attention to Exhibit 120, which is the check for \$16,005.50, payable to William E. Kyne and endorsed Wm. E. Kyne, and there is a notation on that check, "Loan for Transit," is there not?

A. Yes, although it could not have been just for the purchase of the Transit Smoke Shoppe.

(Testimony of Ray Weaver.)

The Court: Let me have the question and answer.

(Question and answer read.)

The Court: The answer should be yes or no. It should be stricken.

Mr. Avakian: The word "yes" was given.

The Court: All except the word "yes" will be stricken.

Q. Was that check likewise turned over to you by the representatives of the Menlo Club when you requested that they turn the records over to you or your representatives? A. Yes.

Q. And did you hear Mr. Kyne's testimony in this case that [2446] he cashed that check himself?

A. That's my recollection of his testimony, yes.

Q. In view of that, Mr. Weaver, do you now wish to change the answer that you gave a few minutes ago, to the effect that your examination of the records in this business did not show any withdrawals of money from the Menlo Club by any of the partners other than Mr. Remmer, Mr. Maundrell and Mr. Nelson, aside from income tax payments?

A. No, because Mr. Kyne stated that these monies were turned over to Mr. Remmer.

Q. Well, to correct your impression on that, do you not recall that Mr. Kyne testified that when he cashed this check he put the money in box No. 48, in which both he and Mr. Remmer had joint access? Do you recall that testimony?

A. I wouldn't recall his testimony without referring to the record.

(Testimony of Ray Weaver.)

Q. Now in answer to Mr. Campbell's question as to whether you were shown any books for the Menlo Club for the year 1945, you stated that you were not. Were you referring then to the card room portion of the business only?

A. That is right.

Q. You were shown books of the Menlo Club for the year 1945 with respect to the bar business, were you not? A. Yes.

Q. And likewise with respect to the restaurant operation? [2447] A. Yes.

Q. Now in connection with the lack of a book for the card room operation of the Menlo Club for the year 1945, I call your attention to Exhibit 89, which is the partnership return of income of the Menlo Club for the year 1945, and I will ask you if you examined that return in the course of your investigation in this case? A. Yes.

Q. And at the time you examined it, did you notice the statement attached to it in the form of a letter dated May 10, 1946, to the Collector of Internal Revenue, which is a part of this exhibit and which I am now showing to you? A. Yes.

Mr. Avakian: Your Honor, I would like to read that letter at this time.

Mr. Campbell: I believe that has been read twice.

Mr. Avakian: Well, I don't know, it may have been read a long time ago, but it is pretty pertinent on this particular matter.

The Court: I think it has been read.

Mr. Avakian: It is not a long letter.

(Testimony of Ray Weaver.)

The Court: Well, we will not read it again.

Q. Mr. Weaver, in connection with your examination of this matter and in connection with the letter attached to the return to which I have just called your attention, did you, [2448] or any of your staff on this case discuss with Mr. Maundrell the matter of the inadvertent destruction by mistake of the poker sheets of the Menlo Club for the year 1945?

Mr. Campbell: I object to the question in that form.

The Court: He can answer yes or no.

A. I can't answer it yes or no.

Mr. Campbell: The basis of my objection goes to this, it attempts to characterize what the conversation was, not whether there was a conversation.

Mr. Avakian: Let me reframe it, your Honor.

Q. Did you, or any of your representatives, discuss with Mr. Maundrell the letter to the Collector of Internal Revenue dated May 10, 1946, which is attached to the Menlo Club 1945 return?

A. I can't answer that yes or no either.

Q. You mean you do not remember?

A. We had a discussion. I do not remember whether it was with Mr. Maundrell or with some one else.

Q. Would it have been either Mr. Maundrell or Mr. Ayton?

A. Well, it may have been Mr. Kyne or someone connected with the club.

(Testimony of Ray Weaver.)

Q. You did discuss it with some one connected with the Menlo Club? A. Yes.

Q. Did you personally discuss it with whoever that representative [2449] was?

A. No, I do not believe I did.

Q. One of the other members of your staff?

A. One of the other members.

Q. Did you hear Mr. Maundrell's testimony in this case to the effect that in remodeling of the offices at 50-52 Mason Street, a number of boxes of old and moldy papers were thrown out by the doorman and that inadvertently the box containing the poker sheets was thrown out with them?

A. I do not recall that testimony. That was the substance of discussions I recall.

Q. You do not recall Mr. Maundrell's testimony in this case about that matter?

A. No, and it does not comply with what I——

Mr. Avakian: Just a moment—you have answered the question.

Q. And it is a fact, Mr. Weaver, is it not, that as a part of the return of the Menlo Club for the year 1945 there was contained a statement that because of the inadvertent destruction of the Menlo Club poker sheets for the year 1945, the income of the card room had been calculated on the basis of the records which were still in existence for the same eight months of the year 1944?

Mr. Campbell: I think the record so states.

The Court: I think so. [2450]

Mr. Avakian: Well, as long as Mr. Campbell agrees it does so state.

(Testimony of Ray Weaver.)

The Court: Well, it does, whether Mr. Campbell agrees or not.

Mr. Avakian: Well, I just wanted not to leave the jury confused on this point, your Honor.

The Court: Proceed.

Q. Now you stated that the books of the Menlo Club did not contain any records of assets and liabilities other than records relating to the Schriber account and the capital accounts. Do you recall that statement this morning?

A. Yes, I believe that was what I said.

Q. Now, Mr. Weaver, isn't it true that the customary method of single-entry accounting does not call for the maintenance of such records?

A. It calls for the maintenance of records of persons other than owners, none of which are contained here.

Q. I am not sure that I understand your answer. You mean that single-entry accounting calls for the maintenance of records as to asset and liability transactions with persons other than the owners?

A. Yes, that's right.

Q. Now do you know, from the evidence in this case, whether there were any asset or liability transactions of the Menlo Club with persons other than the owners, aside from Gene [2451] Schriber?

A. No, I don't except you said there were yesterday.

Q. The books of the Menlo Club which are in evidence here for the year 1946 and the books relating to the bar and restaurant operation for the



(Testimony of Ray Weaver.)

year 1945, are kept on an accounting method that is commonly referred to as single entry, aside from the fact that in addition certain liability accounts are kept; isn't that true?

A. Well, if you want to say they are incomplete single-entry books, yes. A more accurate description would be simply a record of cash receipts and disbursements.

Q. Let me ask you first, the form of the books is the single-entry form; isn't that correct?

A. I don't see how it can be single-entry form if it is not single-entry system.

Q. Well, let me show you—do you have one of them before you? I will show you Exhibit 127, which is the book relating to the restaurant operation for the year 1946. First of all I call your attention to the fact that the book contains in it printed instructions, apparently prepared by the publisher of the book; is that correct? A. Yes.

Q. And the pages themselves are already blocked out in various amounts with printed designations of various categories for each column; isn't that correct? [2452]

A. Yes. In some places the column headings have been changed or others added.

Q. But the printed form itself contains printed column headings? A. Yes.

Q. And you note at the top of each page printed, "The Ideal System," U. S. Patent Office, is on there? A. Yes.

Q. And in the course of your experience as an

(Testimony of Ray Weaver.)

accountant, you have found other taxpayers who have used this same form of book, have you not?

A. In small businesses, yes.

Q. Now insofar as the form of this book, as set up by the manufacturer or publisher is concerned, and disregarding for the moment the entries made in it, but insofar as the form as brought out by the publisher is concerned, is that a single-entry system?

A. I would still characterize——

Mr. Campbell: Just a moment—I will stipulate, Mr. Avakian, that the Ideal Printing Company prints a set of forms, designed for single-entry bookkeeping system.

Mr. Avakian: And will you also stipulate the books here are in that category?

Mr. Campbell: Yes, are at least a part of the forms that they print for that type of particular system. [2453]

Mr. Avakian: Will you also stipulate that that would be Mr. Weaver's testimony as an accountant?

Mr. Campbell: I don't know what his testimony would be. I can't stipulate to that; I only stipulate to the fact.

Mr. Avakian: I will accept it. I can understand your uncertainty.

Q. Now, Mr. Weaver, when you state that the books maintained by the Menlo Club were incomplete single-entry system, will you explain to me, by referring to Exhibit 127, what substantially you have in mind as to the incompleteness of the record?

A. Well, for example, we note that there is one bank which was not entered on the books at all.

(Testimony of Ray Weaver.)

There is no record of cash in safe, cash in safety deposit boxes; there is no record of any assets or liabilities by way of amounts receivable or payable to other persons other than the alleged partners, and even the transactions with the alleged partners were not completely entered. For example, this 64 thousand dollars, which is marked "Loan to Elmer Remmer," I did not find in Mr. Remmer's account, either in capital account or in loan account, nor is there any record to show whether or not any of that amount has been repaid at any time.

Q. Now, Mr. Weaver, insofar as the preparation of an income tax return on the forms prescribed by the Treasury Department is concerned, does it matter, from an accounting point of view, whether you know that Mr. Remmer took 65 thousand dollars out [2454] of the bank as a loan or not?

Mr. Campbell: If the Court please, that is objected to as going right to the very matter which the jury is here to determine.

The Court: Objection sustained.

Mr. Avakian: Well, your Honor, I am trying to cross-examine——

The Court (Interceding): The objection has been sustained.

Mr. Avakian: Could I be heard on it, your Honor?

The Court: No.

Q. Is it not true, Mr. Weaver, that the income tax form prescribed by the United States Treasury Department and in effect for the years 1944, 1945

(Testimony of Ray Weaver.)

and 1946, calls, from an accounting point of view, for computation of net income on the basis of receipts and disbursements rather than on net worth basis?

A. No. It calls for the computation of income on the basis of receipts and expenses. Not all disbursements are expenses.

Q. I will modify my question.

A. And, of course, not all receipts are taxable income, either.

Q. But it doesn't call for net worth method?

A. Not if the records are properly kept.

Q. There is no place on the form for net worth method? A. No.

The Court: We will take a recess for five [2455] minutes.

(Jury and alternate jurors admonished and recess taken at 11 o'clock.)

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. WEAVER

resumes the witness stand on further

Recross-Examination

By Mr. Avakian:

Q. You stated, Mr. Weaver, that in your investigation you found no record of the amount of cash

(Testimony of Ray Weaver.)

kept in the safes or safe deposit boxes at any time during the course of the investigation. Did I understand you correctly in that respect?

A. Yes, other than such portions as may have been designated bank roll.

Q. Now, Mr. Weaver, in your experience and training as an accountant, as a Revenue agent, from your understanding of accounting principles and Treasury regulations, can you refer me to any provision in law or in the regulations which requires that anybody keep a record of the amount of money that he may have in cash, either in safe or safe deposit boxes or in a vault or his wife's purse or anywhere else?

Mr. Campbell: I object to the question in that form as being incompetent.

The Court: Objection sustained.

Q. Mr. Campbell called to your attention this morning the fact that one of the partners in the Menlo Club, Mr. Ditto, had [2456] withdrawn at the end of 1945, and he asked you if you had found any evidence in the record that Mr. Ditto had withdrawn any money and your answer that you had not; is that correct? A. That is not correct.

Q. Will you give me the correct answer?

A. According to my recollection he said, "were there any amounts charged against Mr. Ditto's account other than the amounts paid on account of taxes."

Q. And your answer was that you had found

(Testimony of Ray Weaver.)

nothing aside from amounts paid for taxes; is that right?      A. Yes, that is right.

Q. Do you recall the following testimony given in this case by Mr. Maundrell on December 28th at page 1468 of the transcript:

“Q. Mr. Maundrell, did you ever see an agreement, wherein Mr. Ditto acknowledged—the agreement was signed by Mr. Ditto and Mr. Remmer—Mr. Ditto acknowledged that he received from his interest at the time he withdrew from the partnership of the Menlo Club 14 thousand odd dollars?”

Mr. Campbell objected.

“The Court: Objection overruled. Answer the question.

“A. Yes, sir.”

Do you recall that testimony? [2457]

Mr. Campbell: I will stipulate that that was the testimony in the record.

Mr. Avakian: That is very generous.

Q. Do you recall that?

The Court: Pardon me, Mr. Avakian—let us avoid these remarks. Don't enter into argument over small matters.

Q. When you gave your answer to Mr. Campbell, did you have that testimony of Mr. Maundrell's in mind?

A. I had in mind Mr. Maundrell's testimony that there is no entry in the books of anything to Mr. Ditto and the thought also the books before me showed no such payment.

Mr. Avakian: May I have the question read so

(Testimony of Ray Weaver.)

the witness may answer? I move to strike the answer as not responsive.

The Court: We will have the question and answer read.

(Question and answer read.)

The Court: The answer may stand.

Q. Can you tell me, Mr. Weaver, when you answered Mr. Campbell's question this morning, if you had in mind the testimony of Mr. Maundrell which I just read to you from page 1468?

A. Not the part that you have just read, no.

Q. Now in answering Mr. Campbell's questions this morning, as an explanation of the net worth method of determining income you stated the net worth method attempts to determine [2458] what the person owns at one date and to compare it with what he owns at another date and from the difference, being what he owes at those two dates, after making allowance for federal income tax and living expenses, to determine the amount of his net income or loss during the period, and on further questions from Mr. Campbell you stated you should also give effect to non-taxable receipts, which you enumerated as gifts, inheritances, and the nontaxable portion of capital gains. Is it not true, Mr. Weaver, that in determining net income on net worth method, you should also eliminate any money which the taxpayer has borrowed during the period that is covered by your net worth computation, which he has not repaid at the end?

(Testimony of Ray Weaver.)

A. I believe that is covered in my statement. I didn't intend that statement to be a technical explanation of the net worth method. I tried to make it as simple as I possibly could. When I refer to the person's net, I mean his net worth at one period as compared with his net worth at another period, and in determining net worth I would include the cost of the assets which he owned, less the face value of the liabilities owed.

Q. In making a net income computation on the net worth method, you should take in account somewhere in your computation money borrowed by him during the period covered by the computation which he has not repaid at the end of the period?

A. Yes, assuming that corresponding liabilities and [2459] corresponding assets giving rise to the liability, are also computed in their net worth statement. Those statements should be consistent.

Q. Let us see if we can get this in simple terms. If you were making a net worth computation of me, for example, for the year 1941, and if during the year 1951 I had gone to the bank and borrowed a thousand dollars and at the end of 1951 I had not yet repaid that, you would show that as a liability at the end of 1951 in computing my net worth at that time, would you not?

A. Yes, if I also showed as an asset the thousand dollars that you borrowed or whatever asset into which you may have converted that one thousand dollars, because if I did not include the asset, then it would be incorrect to include the liability.



(Testimony of Ray Weaver.)

Q. Let us suppose I used the thousand dollars to pay the salary of my legal secretary in my office, you would still show the thousand dollars as a liability at the end, would you not?

A. No, then it would depend on whether or not you were on a cash or accrual basis.

Q. Let us suppose I were on the cash basis.

A. Will you read the question?

(Question read.)

A. If one thousand had been borrowed from the bank, yes.

Q. And in that instance there would be no corresponding asset [2460] relative to that one thousand dollars, in view of the fact that I had spent the money for salary of my secretary?

A. That was an asset at the time the liability originated.

Q. But as at the end of 1951, when you were computing my net worth, there would be no asset in my net worth statement at that time relating to the loan at the bank of one thousand dollars?

A. Not if it was paid out, no.

Q. If you were computing my income for 1951 on the net worth method, and if at the beginning of 1951 Mr. "X" owed me a thousand dollars, you would show that thousand dollars in my assets at the beginning of the year, would you not?

A. Yes, unless the asset arose from a transaction relating to any income, in which case on cash basis it would be incorrect to include the asset.

(Testimony of Ray Weaver.)

Q. Let us suppose Mr. "X" is just a friend, I have no business with him, and in 1950 I borrowed a thousand dollars, which I still owed at the beginning of 1951?

A. This is the reverse, I believe——

Q. Let me reframe the question. In 1950 I had loaned money to Mr. "X," with whom I had no business transaction, and he still owed that money to me at the beginning of 1951, you would show that thousand dollars as an asset owing me at the beginning of 1951, would you not?

A. Yes. [2461]

Q. And then if Mr. "X" repaid me that money during 1951, you would then eliminate that from my assets at the end of 1951, would you not?

A. Yes.

Q. And is this a fair statement of the effect of those two loan transactions that I have mentioned to you, Mr. Weaver, that, if at the beginning of the period involved, in net worth computation, Mr. "X" owed me money which he paid to me during the year 1951, the amount of that payment would have the effect of decreasing my net income computed for the year on net worth method?

A. No, it depends on what happens to the repayment. If the amount repaid remained on hand at the end of the year in cash, it would have no effect, merely a substitution of cash asset. If during the year you took that cash and converted to some other asset, it still would have no effect, unless in the

(Testimony of Ray Weaver.)

possible conversion you had suffered some loss or had some gain.

Q. I do not think I made my question clear. I will rephrase it. In computing my income for the year 1951 on net worth method, the amount of net income which you compute would be one thousand dollars less if you included Mr. "X's" obligations to me at the beginning of the year than it would be if you had not included Mr. "X's" obligation to me as an asset at the beginning of the [2462] year?

Mr. Campbell: Objected to as immaterial.

The Court: Let me have the question.

(Question read.)

The Court: You may answer the question.

A. You mean all things remaining equal?

Q. That is right.           A. Yes.

Q. And similarly, as to the end of the year, the example where I had borrowed money during the year 1951, which I still owed at the end of the year, the inclusion of that thousand dollar liability of mine for that loan at the end of the year would reduce by one thousand dollars the amount of the net worth income computation, in comparison with what it would have been if you did not include that thousand dollar liability, isn't that true, again assuming that all things being equal?

A. I am simply trying to say that if the net worth in the period is understated and the net worth at the end of the period is overstated, you

(Testimony of Ray Weaver.)

can't arrive at the correct net income computation.

Q. Are you able to give an answer?

A. The complex way in which you state it somewhat confuses me because I do not know whether you are taking things equal——

Mr. Avakian: Very well, let me restate it. [2463]

Q. What I am getting at is this, Mr. Weaver—it is true, is it not, that in order to make a correct, complete and accurate computation of net income on net worth method, it is necessary to take into account money which other people owe the taxpayer at the beginning of the period, and also money which the taxpayer owes to other people at the end of the period?

A. So far as it arises as the result of the receipt of income or the incurrence of expenses, which are not properly taken into account on cash basis.

Q. With that qualification, your answer would be yes? A. Yes, that's right.

Mr. Avakian: That's all.

#### Redirect Examination

By Mr. Campbell:

Q. Counsel has read from the record here, page 1486, question propounded to Mr. Maundrell and the answer, and I also wish to refer to the record at this time and read a few questions propounded to and answered by Mr. Maundrell, relative to the same subject matter to which counsel directed the attention of the witness.

(Testimony of Ray Weaver.)

The Court: Do you mean you just propose to read it?

Mr. Campbell: I am going to ask the witness a question concerning it.

The Court: Oh.

Q. Mr. Avakian asked you, Mr. Weaver, if you had in mind at [2464] the time you gave your answer relative to payments made to Mr. Ditto the following question asked Mr. Maundrell and the following answer, page 1468 of the record. Question by Mr. Gillen:

“Q. Mr. Maundrell, did you ever see an agreement, wherein Mr. Ditto acknowledged—the agreement was signed by Mr. Ditto and Mr. Remmer—Mr. Ditto acknowledged that he received from his interest at the time he withdrew from the partnership of the Menlo Club 14 thousand odd dollars?

“A. Yes, sir.”

I will ask you if, in giving your answer, you had in mind also the redirect examination of Mr. Maundrell—

Mr. Gillen: I do not think Mr. Weaver said he had that in mind. My recollection is he did not have that in mind, that testimony of Mr. Maundrell, when he gave his answer to Mr. Campbell's question.

Mr. Campbell: I am going to ask him if he had in mind this morning the following testimony, page 1472:

“Q. In response to counsel's questions, you said you had seen some kind of agreement between Mr. Remmer and Mr. Ditto? A. Yes, sir.

(Testimony of Ray Weaver.)

“Q. When did you see that?

“A. Last night. [2465]

“Q. Where did you see that?

“A. Mr. Gillen’s apartment.

“Q. Had you ever seen it prior to that time?

“A. No, sir.

“Q. Did you ever have any knowledge with reference to it prior to that time?      A. No, sir.

“Q. Do you know, of your own knowledge, whether any 14 thousand dollars was paid to Mr. Ditto?      A. No, sir.

“Q. Did you ever talk to Mr. Ditto about any such agreement?      A. No, sir.”

Did you have that testimony in mind at the time of your answer?

A. I had Mr. Maundrell’s complete testimony in mind, rather than the part that Mr. Avakian read.

Mr. Campbell: That’s all.

**Recross-Examination**

By Mr. Avakian:

Q. Mr. Weaver, do you have before you the book of the Menlo Club that shows Mr. Ditto’s capital account?      A. Yes.

Q. What is that exhibit number?      A. 125.

Q. And does that show the amount of Mr. Ditto’s capital [2466] account at the time he withdrew from the partnership at the end of 1945?

A. It shows net total during 1945. It shows balance 1945, which I assume is December 31st—it

(Testimony of Ray Weaver.)

doesn't so state—and in the balance column there is an amount entered, which from the nature of the succeeding entries appears to be a credit balance on that date.

Q. What is the amount of it?

A. \$14,583.90.

Q. And from your examination of the records and of the Menlo Club partnership tax returns for the years 1945 and 1946, you do know, do you not, that at the time of Mr. Ditto's withdrawal, that is, at the end of 1945, Mr. Remmer's percentage in that partnership increased from 40 per cent to 55 per cent?

A. I know it increased. There is nothing on the books to indicate any payment for any increase.

Q. I call your attention to prosecution's Exhibit 89, which is the Menlo Club return for the year 1945, and Exhibit 90, which is Menlo Club partnership return for the year 1946, and direct your attention to Schedule I of each return, and ask you whether those returns show that for the year 1945 Mr. Remmer's percentage interest was 40 per cent and for the year 1946 his percentage interest was 55 per cent?

A. That is what the returns state, yes.

Mr. Avakian: No further questions.

The Court: Any further questions? [2467]

Mr. Campbell: Just a moment. That's all.

The Court: You are excused, but please remain available until excused by both parties.

Mr. Campbell: Yes, he will be available.

Mr. Thompson: We have a stipulation, your Honor, of the testimony of a witness. I would like to read into the record, your Honor, the stipulation relating to testimony of Dorothy A. Remmer.

The Court: Very well.

Mr. Thompson: It is stipulated that if Dorothy A. Remmer should appear, be sworn and testify as a witness in the above case (refers to the case now on trial), she would testify in substance as follows: That she resides at 634 Grand Avenue, Oakland, California——

The Court: Just a moment before you proceed with this stipulation. Is there any question of privilege?

Mr. Thompson: This is the defendant's sister, your Honor.

That she resides at 634 Grand Avenue, Oakland, California; that she is a sister of the defendant, Elmer F. Remmer; that her name appears, or appeared, on public records as the owner in joint tenancy with Mrs. Helen L. Remmer, the wife of Elmer F. Remmer, of certain real property located in Contra Costa County, California; that Dorothy A. Remmer never had any beneficial interest in any of said real property located in [2468] Contra Costa County, California; that Dorothy A. Remmer did not furnish any of the money used to purchase said real property or pay any part of any loans, the proceeds of which were used to purchase said property; that Dorothy A. Remmer did not make any loans to Helen L. Remmer or Elmer F. Remmer; that Dorothy A. Remmer never had, and does



not now have, in her possession or in her name, individually or jointly, any other property that belongs to Mrs. Helen L. Remmer or Elmer F. Remmer; that when the real property in Contra Costa County, California, which was sold by Helen L. Remmer and Dorothy A. Remmer was sold, it was sold after December 31, 1946, and Dorothy A. Remmer did not receive any part of the proceeds of said sale or sales.

Mr. Golden: So stipulated.

Mr. Campbell: Now the defense has asked that Mr. Schriber be recalled for further cross-examination.

Mr. Golden: Is it the Court's pleasure that we call him now?

The Court: If counsel wants to call him; I have no preference.

Mr. Thompson: We have an exhibit we would like to have marked and counsel would have an opportunity to examine it over the noon recess.

The Court: Very well.

Mr. Thompson: I have two documents, the first of which [2469] I would like to have marked Exhibit 109A, inasmuch as that refers to that same exhibit and may be more easily handled if it is marked in that series. A similar photostatic document, which we would like to have marked Exhibit 109B. At this time, your Honor, we offer in evidence Exhibits 109A and 109B and would like to have counsel have the opportunity to examine them during the recess.

Mr. Avakian: May we withdraw them from the clerk's possession during the recess?

The Court: Any objection to withdrawing them?

Mr. Thompson: No objection.

The Court: They may be withdrawn during the noon recess.

**GENE SCHRIBER**

having been previously sworn, was recalled and testified as follows on

**Cross-Examination**

By Mr. Gillen:

Mr. Gillen: So the record may be clear, may it please the Court, Mr. Schriber was called some weeks ago as a witness by the prosecution. He was examined and cross-examined. With the Court's permission, we were to have an opportunity to recall him for further cross-examination. He is already under oath. He is now here for further cross-examination by the defense.

The Court: Very well. You may proceed.

Q. Mr. Schriber, I will hand you here two-page typewritten [2470] document, defendant's "Z" for identification. I will ask you to look at it and examine it, look particularly at the second page, the purported signatures. Have you done so, sir?

A. Yes.

Q. Do you recognize the signatures on the second page of that document? A. Yes.

Q. Whose signatures are they?

A. Elmer Remmer and myself, Gene Schriber.

(Testimony of Gene Schriber.)

Mr. Gillen: I will offer this exhibit as defendant's Exhibit "Z" in evidence.

Mr. Campbell: To which we object on the grounds that the document purports to be a summary of some kind made in 1949, purporting to be a recitation of certain facts which are signed with the name Gene Schriber and that of Elmer L. Remmer, agreeing as to facts. Now that is not the proper method of getting facts before the Court.

The Court: Let me see the exhibit.

Mr. Gillen: It is a statement against the interest of the defendant in this case.

(Laugh indicated.)

Mr. Gillen: I don't see what is so amusing about that.

The Court: We do not want any demonstrations at all. There should be no demonstrations here whatever.

Mr. Campbell: It is matter for testimony, if the Court [2471] please, not for memorial. Further, it is not the best evidence.

Mr. Gillen: I do not know what counsel means, not the best evidence, bearing the signature of the two parties involved.

The Court: The objection is sustained. We will take our recess at this time.

(Jury and alternate jurors admonished and noon recess taken at 11:45 a.m.)

February 1, 1952—1:40 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. SCHRIBER**

resumes the witness stand on further

Cross-Examination

By Mr. Gillen:

Mr. Gillen: Perhaps it would be more practical, your Honor to discuss the matter of these exhibits after we finish with Mr. Schriber.

The Court: Very well.

Q. Mr. Schriber, you testified here some weeks ago as a witness for the government, and you were cross-examined. You remember the occasion, do you not? A. Yes.

Q. And without consuming the time to repeat your testimony, but just preliminarily a resume of your testimony to bring out our thoughts of the subject matter, you recall testifying, do [2472] you not, that Mr. Remmer in 1945 purchased from you the three units comprising the Menlo properties, called the Menlo Club card room, restaurant and bar? A. That is correct.

Q. And that the agreed price was 175 thousand dollars? A. That is right.

Q. And there were executed in your behalf by Mr. Remmer certain promissory notes, covering the agreed price, and a down payment of 25 thousand

(Testimony of Gene Schriber.)

dollars upon execution of those notes and agreement; is that true?      A. That is correct.

Q. And then there were other subsidiary things, such as lease on the premises, which was guaranteed by Mr. Remmer, and so forth; do you recall that?

A. That is right.

Q. And then you recall testifying, do you not, that the initial payment of 25 thousand dollars was in the form of cash, which subsequently, at the request of Mr. Remmer, was returned by you and in lieu thereof you took a check for 25 thousand dollars signed by Mr. Maundrell, who was then keeping books for the Menlo Club?

A. That's right.

Q. Now did you and Mr. Remmer, at any time subsequent to the return of the 25 thousand dollars in cash by you to Mr. Remmer and the taking by you in lieu thereof a check for 25 thousand [2473] dollars, representing first payment on that agreement for the purchase of the Menlo properties, at any time subsequent thereto was there entered into between you and Mr. Remmer an agreement and statement of the status of the transaction? Do you understand my question?

A. Yes, I understand. Yes, we talked about it, but the statement was not prepared and signed until later.

Q. Then your answer is that there was subsequently a written statement of the status of the transaction between you and Mr. Remmer; that is,

(Testimony of Gene Schriber.)

history of the payments and the then status of the transaction, signed by both of you?

A. A period afterward, that is correct.

Q. Now, Mr. Schriber, I will ask you to look at defendant's Exhibit "Z" for identification again, the document I showed you this morning, the signatures on which you have already identified as those of yourself and Mr. Remmer. Now I ask you if that is the agreement and statement executed by and between you and Mr. Remmer, relating the history of the transaction and its then status?

A. That's right.

Mr. Gillen: Now again I offer this document as defendant's Exhibit "Z" in evidence.

Mr. Campbell: To which we make the same objection as heretofore; not the best evidence and purports merely to be a memorial of testimony which has been offered in evidence here. [2474]

The Court: Objection sustained.

Q. All right, let me ask you this: Did you at any time subsequent to the execution of the original agreement of sale to Mr. Remmer of the Menlo properties, and subsequent to the time that you returned the 25 thousand dollars cash to Mr. Remmer and took in lieu thereof a 25 thousand dollar check as first payment under the agreement, relate the circumstances of returning the 25 thousand dollars cash and taking a check to Mr. Weaver of the Internal Revenue Department?

Mr. Campbell: Objected to as immaterial and incompetent, if the Court please, hearsay.

(Testimony of Gene Schriber.)

The Court: You may answer the question yes or no.

A. Yes.

Q. And did you relate that to him in connection with an inquiry by Mr. Weaver into your own personal income tax affairs? A. Yes.

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained. The answer will go out.

Q. Was there anybody else present when you related the circumstances of the return of the 25 thousand dollars cash to Mr. Weaver and the taking of 25 thousand dollar check signed by Mr. Maundrell in lieu thereof?

Mr. Campbell: That is objected to, if the Court please. It is incompetent, immaterial, and the question purports to state conversation which is incompetent and immaterial. [2475]

Mr. Gillen: May I correct my question. I am told I used the name of Weaver instead of Remmer. I should have said returned the 25 thousand dollars cash to Mr. Remmer and took a check for 25 thousand dollars in lieu thereof.

Mr. Campbell: We make the same objection.

The Court: Objection sustained.

Mr. Gillen: May I point out your Honor permitted him to answer he did have a conversation with Mr. Weaver, permitted him to answer that question? This is merely a question asking whether anybody else was present when he did have that conversation with Mr. Weaver.

(Testimony of Gene Schriber.)

The Court: Well, you can answer the question.

Mr. Campbell: This is characterization of the conversation and proposes to put forth the subject matter.

The Court: The question is merely as to who was present.

Mr. Gillen: That is all, your Honor.

The Court: You may answer.

A. Mr. Morgan, Mr. Weaver, and some other gentleman; I don't remember the other man's name.

Q. Mr. Morgan is the gentleman who sits in the court room and is also connected with the Internal Revenue Department?

A. That is right.

Q. Now can you fix the time that you had that conversation with Mr. Weaver and Mr. Morgan?

A. No, I can't fix the time exactly. It was sometime in the [2476] latter part of 1946.

Q. The latter part of the year 1946?

A. Yes.

Q. And can you fix the place where that conversation took place?

A. 714 New Montgomery Street, I think is the address.

Q. That is the office, or one of the offices, of the Internal Revenue Department?

A. That's right.

Q. Now, Mr. Schriber, in the year 1949, or at any later time, did you show Mr. Weaver and Mr. Morgan, or any one of the other members of the Internal Revenue Department of San Francisco, this document which you have examined and which



(Testimony of Gene Schriber.)

has been identified here as defendant's Exhibit "Z" for identification?      A. No.

Mr. Gillen: Now, may it please the Court, I feel we have now laid the foundation for the admission of this as the best evidence in support of oral testimony, and ask that it be admitted as defendant's Exhibit "Z" in evidence.

Mr. Campbell: To which we object upon all the grounds heretofore stated.

The Court: Same ruling.

Mr. Gillen: I then respectfully ask the Court's permission to be heard on the matter out of the presence of the jury. [2477]

The Court: Very well, we will excuse the jury.

(Jury and alternate jurors admonished and excused at 1:50 p.m.)

(In the absence of the jury.)

(NB 338, p. 100; NB pp. 1.9.)

2:15 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

Mr. Gillen: May it please the Court, the defense has no further questions of the witness Schriber.

Mr. Campbell: No further redirect.

The Court: Then Mr. Schriber may be finally excused?

A. Yes.

The Court: I understand there is an offer of Exhibits 109A and 109B.

Mr. Campbell: It has been stipulated that those exhibits, consisting of the present documents, may be admitted into evidence.

Mr. Gillen: So stipulated.

Mr. Campbell: First, your Honor, please, as I earlier informed the Court, the government has one witness, after whose testimony it intends to rest. Prior to putting that witness on the stand, it is necessary certain computations be made and I therefore request an early recess, in order that that may be done and his testimony taken Monday morning. [2478]

The Court: Ladies and gentlemen of the jury, I want you to know that counsel on either side and the Court are not at all desirous of wasting any of your time, but I really believe the end of the case would be expedited if we adjourned at this time until Monday morning. So we will be in recess until Monday morning. Monday is calendar day, so this case will be in recess until 11:00 o'clock.

(Jury and alternate jurors admonished and recess taken at 2:35 p.m.) [2479]

Monday, February 4, 1952—11:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

A. V. BRADY

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. Will you state your name, please?

A. Augustus V. Brady.

Q. Mr. Brady, what is your present official position?

A. I am technical advisor of the Penal Division, Bureau of Internal Revenue.

Q. How long has that been your position?

A. About 5 years, 5 years the first of May.

Q. Prior to that were you connected with the government in any capacity?

A. Yes, I was.

Q. In what capacity?

A. I was Internal Revenue Agent for around 22 years prior to that time.

Q. As Internal Revenue Agent, to what office or offices were you attached?

A. Well, I was attached to the Internal Agent in charge of San Francisco, Honolulu, Denver, New York and Washington, D. C.

Q. At various times during your 22 years as an Internal [2480] Revenue Agent; is that correct?

(Testimony of A. V. Brady.)

A. Yes, sir.

Q. And your position as technical advisor to the Penal Division of the Bureau of Internal Revenue, to what office or offices have you been attached?

A. Just to the San Francisco office.

Q. Now, Mr. Brady, in connection with your duties as an Internal Revenue agent, prior to your connection with the Penal Division as technical advisor, did you have an occasion to meet the defendant, Elmer Remmer?

A. Yes, I did.

Q. In that connection, I am going to call your attention to plaintiff's Exhibits 11 and 12, being individual income tax returns of Elmer F. Remmer and his wife, Helen L. Remmer, respectively, for the year 1934, and I will call your specific attention to plaintiff's Exhibit 11 and the signature appearing thereon as the officer before whom this return was sworn to, A. V. Brady, and ask you if that is your signature?

A. Yes, sir; it is.

Q. I will ask you whether or not you were present at the time the signature, Elmer F. Remmer, was attached thereto?

A. Yes, I was.

Q. Who placed that signature hereon?

A. Mr. Remmer.

Q. That is the defendant here? [2481]

A. Yes, sir.

Q. And calling your attention to the body of the document and the pen and ink written words and figures, I will ask you whose writing that is?

A. That is my writing, Mr. Campbell.

Q. And I call your attention to plaintiff's Ex-

(Testimony of A. V. Brady.)

hibit 12, first to the writing appearing in the body of the return of Helen L. Remmer, and ask whose writing appears thereon?

A. That is my writing, Mr. Campbell.

Q. Were you present at the time that that return was signed? A. No, sir; I was not.

Q. I call your attention to the fact that the acknowledgment of the signature is before one Mattie G. Sterling, a notary public in and for the City and County of San Francisco. Were you present at the time the acknowledgment of the notary public was placed thereon? A. No, I was not.

Q. Now, Mr. Brady, where was it that these returns were prepared?

A. Prepared in the Bank Club in Reno.

Q. And do you recall the date upon which they were prepared?

A. Mr. Campbell, I have a report at the time I secured those delinquent returns and if I could use that to refresh my recollection I think it would help me.

Q. So you have that with you? [2482]

A. Yes, I do.

Q. Will you produce it? You have handed me a document consisting of some five pages; is that the report to which you refer? A. Yes, sir.

Mr. Campbell: May this be marked for identification as government's Exhibit 182 for identification?

Q. Now, Mr. Brady, I hand you back 182 for identification and ask you if you will refresh your

(Testimony of A. V. Brady.)

recollection, and having refreshed your recollection, state upon what date it was that these returns were filled out by you?

A. Mr. Campbell, the report here is dated——

Q. Never mind that—state the date, if you will.

A. Well, possibly a couple of days ahead of this report.

Q. Would an examination of the returns assist you?      A. Yes. May 3rd.

Q. Of what year?      A. 1937.

Q. You stated that these returns were prepared at the Bank Club in Reno?      A. Yes, sir.

Q. What was the occasion of your being there at that time?

A. Well, I had just finished checking the books of the corporation in which Mr. Remmer owns some stock.

Q. What corporation was that? [2483]

A. Cal-Neva Lodge, Inc.

Q. Yes?

A. And during the course of the examination of that corporation I found there were a substantial amount of dividends paid to the stockholders and I was anxious to see whether the stockholders reported the dividends as reflected on the books of the corporation.

Q. And for what year had those dividends been paid?      A. For the year 1934.

Q. On the occasion of May 3, 1937, when you were in the Bank Club and this return was filled out, did you have a conversation with Mr. Remmer?

(Testimony of A. V. Brady.)

Answer that yes or no. A. Yes, sir; I did.

Q. Who, if anyone, beside yourself and Mr. Remmer were present on that occasion?

A. May I relate how I met Mr. Remmer?

Q. No, just if you will answer the question. Who, if anyone else, was present, if anyone else was present during any part of the time?

A. Mr. William Graham was present; I believe also Mr. James McKay.

Q. Did they remain throughout the conversation? A. No, sir; they did not.

Q. Had you met Mr. Remmer prior to that occasion? A. Not to my recollection. [2484]

Q. Who, if any one, introduced you to him on that occasion?

A. Mr. McKay and Mr. Graham both, I believe.

Q. Now will you state the conversation which you had with Mr. Remmer on May 3, 1937?

The Court: I think we had better hear that conversation in the absence of the jury first.

(Jury and alternate jurors admonished and excused at 11:15 a.m.)

(In the absence of the jury.)

The Court: The thought I have, it has been my practice whenever a conversation with a defendant or statement of a defendant has been related, I like to hear it in the absence of the jury. I have no idea what it is, but we will see what it is first.

Q. Mr. Brady, will you relate then the conversation which you had at that time?

(Testimony of A. V. Brady.)

A. Mr. Campbell, this is some 15 years ago.

Q. You may refresh your recollection examining that document. Just relate, if you will, the conversation.

Mr. Golden: By that document, you refer to 182?

Mr. Campbell: For identification.

Q. Incidentally, in that connection, Mr. Brady, in the absence of the jury, is that a report which you made in your official capacity at the time concerning the facts which you are now about to relate? [2485]

A. Yes, sir.

Q. And that was, of course, the type of report and report which was ordinarily and customarily made in situations of the kind where you obtained a return?

A. Yes, sir.

Q. All right. Now will you proceed and relate the conversation?

A. Well, I came into the Bank Club and asked Mr. McKay and Mr. Graham if they could contact Mr. Remmer for me, in that I had some personal matter to take up with him and they, of course, knew I had just checked the Cal-Neva because I asked them to show me their returns to see whether they reported the dividends which the corporation paid in that year.

Q. If I may interrupt on that point—we are in the absence of the jury; if the Court permits you to relate the conversation, you are not permitted to relate your conversation with Mr. Graham and Mr. McKay outside the presence of the defendant,



(Testimony of A. V. Brady.)

Mr. Remmer, so your answer will necessarily be confined in relating conversations during such times as the defendant, Mr. Remmer was present. You understand that?      A. Oh, yes.

Q. All right.

A. I want to get this as correct as I can, Mr. Campbell.

Q. Yes, go ahead; proceed.

A. Well, I met Mr. Remmer through Mr. Graham and Mr. McKay [2486] and I told him that I had just checked the books of Cal-Neva Lodge and the books disclosed that he had received a dividend of some 17 thousand dollars. I wanted to know if he made a report——

Q. For what year?

A. For the year 1934. Now my recollection is Mr. Remmer said to me, he admitted that he received the dividend, however, and he said he lost the money gambling, therefore, he felt that he was not required to file a return, in that he had lost more than the amount he received. I explained to him that income from those sources, that is dividends, could not be used to offset gambling losses, even though the corporation was a gambling corporation, and I think Mr. Remmer understood it from that time on.

Q. Of course, that is your conclusion. It is what you told him?

A. Yes. And then I got the returns prepared and told him it would be necessary at that time to take a jurate himself and Mrs. Remmer, not being

(Testimony of A. V. Brady.)

present, I asked him to have her return acknowledged before a notary public, which he did. They were delivered back to me a few days later. However, at that particular time, I did not pick up any taxes——

The Court (Interceding): Let me ask you, is that the sum and substance of your conversation with Mr. Remmer?

A. I would say so. [2487]

The Court: Are you planning to testify to any other conversations with him?

Mr. Campbell: There are one or two more particulars regarding this conversation which I wish to draw out, which he has not related yet.

The Court: I say planning—do you anticipate being called upon to relate any other conversations?

Mr. Campbell: No, there will not be any other conversation other than this particular one.

Q. You never had any other conversations other than that one relating to his tax matters?

A. Not relating to his tax matters.

Q. On that occasion was anything said regarding the delinquent penalty set forth on this return?

A. The fact I had the penalty on the return——

Q. Was anything said?

A. I am sure I explained to Mr. Remmer the reason for it, because in my report I mentioned I discussed the charges with him.

Mr. Avakian: It assumes in that respect he is drawing on his conclusion as to what he probably did.

(Testimony of A. V. Brady.)

The Court: Well, I am not interested in those questions. I had other reasons for sending out the jury.

Q. Was anything said in the course of that conversation as to [2488] his financial situation as it existed at the time of your conversation?

A. He pleaded that for the past several years he had made nothing; as a matter of fact at that time he owed Messrs. Graham and McKay several thousand dollars. I have a notation here: "It was also noted on the books of Cal-Neva Lodge, Inc., that this taxpayer had received advances for several years."

Q. Did he tell you anything other than the fact he had not made any money, that he had no money available and that he was indebted to Mr. McKay and Mr. Graham?      A. Yes.

Q. What else did he tell you?

A. He said he did not have money to pay the taxes when I picked up the delinquent returns.

Q. What was the amount of the delinquent returns?

A. \$142.50, together with penalty, \$35.60. Because otherwise I would have asked for——

Q. Don't reason what you would have done. What is it he said? Is that what he said?

A. To the best of my recollection.

Mr. Campbell: That covers the scope of the conversation.

The Court: We will call in the jury. We will go over the ground in the presence of the jury.

11:20 A.M.

(Defendant present with counsel.) [2489]

(Presence of the jury and alternate jurors stipulated.)

MR. BRADY

on the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Now, Mr. Brady, will you relate the conversation which you had with Mr. Remmer on the 3rd of May, 1937, on the occasion of your preparing these delinquent 1934 returns of Mr. Remmer and his wife?

A. That refreshes my memory that referring to the report that I prepared at the time, dated May 17, 1937. I was introduced to Mr. Remmer by Mr. Graham and Mr. McKay and I told him that I had just made an examination of the books and records of the Cal-Neva Lodge, Inc., in which he was one of the stockholders, and found that—

Mr. Gillen: That would be hearsay.

Mr. Campbell: No, he is relating the conversation had with Mr. Remmer.

Mr. Gillen: I am sorry, I misunderstood.

A. Mr. Gillen, I said Mr. McKay and Mr. Graham introduced me to Mr. Remmer.

Mr. Gillen: I am sorry, I misunderstood.

Q. Just proceed.

A. I told him I checked the books of the corpo-

(Testimony of A. V. Brady.)

ration and found there was a substantial dividend paid in 1934 and I wanted to know whether he made a record of it on his return and I believe he told me at the time, to the best of my recollection, that [2490] he did not file a return because he did not make sufficient income. He admitted receiving this dividend but said he lost that and more in gambling and that was the reason he did not think he was required to file a return. I explained to Mr. Remmer at the time that income from this source, that is, dividends from a corporation, even though the corporation was a gambling corporation, may not be offset by gambling losses, therefore, a return was required, which I secured; and there is one other thing, I picked up this 1934 return in 1937 and I asked Mr. Remmer, I said, "How about 1935 and 1936, they would also be delinquent now," and he told me he had made no money for those years, he had lost it gambling.

Q. Do you recall anything else that was said on that occasion?

A. Only that I explained the necessity in view of a 25 per cent delinquent penalty.

Q. I call your attention on the returns they set forth 25 per cent delinquent penalty, was that put on prior to the signing of these returns by Mr. Remmer and his wife?

A. Yes.

Q. Now at the time Mr. Remmer signed this return, was any money paid on account of the taxes, do you know?

A. No, sir.

(Testimony of A. V. Brady.)

Q. Did you have any conversation with Mr. Remmer relative to that?

A. To the best of my recollection now I asked for the tax and [2491] penalty. As I told him, it was the procedure to collect the tax and penalty if possible. He said he didn't have the money and therefore I took the returns without the payment of tax.

Q. Now, Mr. Brady, was anything said in that conversation relative to Mr. Remmer's and his wife's source of livelihood during the years 1934, 1935 and 1936?

A. Well, the source of livelihood——

Q. What did he say?

A. Well, he said his income was from gambling.

Q. I believe you stated he told you he had lost money during those years?

Mr. Gillen: Objected to as leading and suggestive. He has his answer. That is objected to—argumentative.

The Court: It may be it is leading.

Q. What, if anything, did he say as to money he was living on during that time?

A. I asked him about his income. He said, well, he had been in debt to Mr. Graham and Mr. McKay and I believe he said also, "Look at the books and see where I have overdrawn my account at Cal-Neva."

Q. Was Mrs. Remmer present or not during this time?

A. No, sir; she was not.

(Testimony of A. V. Brady.)

Q. What, if anything, was done relative to securing her signature on her return?

A. Well, the fact I couldn't [2492] acknowledge—

Q. No, not the mental process—what did you do?

A. I asked Mr. Remmer to have her return acknowledged before a notary and returned to me.

Q. I believe you stated it was returned to you within a few days?

A. Within a few days it was returned, yes.

Q. And will you state the amount of taxes that you found to be due on these returns?

Mr. Gillen: Objected to—the return would be the best evidence of that.

Mr. Campbell: Very well, I will read from Exhibit 11, delinquent return of Elmer Remmer for 1934, shows tax liability of \$142.50, plus 25 per cent delinquent penalty, \$35.60, or a total of \$178.10. On plaintiff's Exhibit 12, delinquent return of Helen L. Remmer's income for the year 1934, shows the same figures as to the amount of tax due and the 25 per cent delinquency.

Q. Now, Mr. Brady, have you, at my request, prepared a chart setting forth assets and liabilities of Elmer F. Remmer and Helen L. Remmer for each of the dates December 31, 1943, 1944, 1945 and 1946?

A. Yes, I have, Mr. Campbell.

Q. I show you this accounting sheet headed "Elmer F. and Helen L. Remmer" and ask you if that is the chart to which you refer?

A. Yes, it is. [2493]

(Testimony of A. V. Brady.)

Mr. Campbell: May this be marked for identification as government's Exhibit 183 for identification. I presume counsel will want to examine this before questions are asked.

Mr. Avakian: It will take about 10 minutes.

(Jury and alternate jurors admonished and noon recess taken at 11:30 a.m.)

February 4, 1952—1:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. BRADY**

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Brady, I am going to return to you this plaintiff's Exhibit 183 for identification, which you have previously identified as a chart prepared by you at my request. Mr. Brady, I will ask you if, in preparing this chart, and under my instructions, you gave effect to Exhibits 150 and 150A, the certified copy of the statement from the Bureau of Public Debt and the photographic copy of the bonds, in your notes? A. Yes, sir; I did.

Q. And did you also give effect to Exhibit 169 in evidence? A. Yes, sir; I did.

Q. Did you also, at my request, give effect to Exhibit 164? A. Yes, sir; I did.



(Testimony of A. V. Brady.)

Q. And to Exhibit 163? [2494]

Q. And to Exhibit 165?

A. Yes, sir; I did.

Q. Did you also give effect to Exhibit 98?

A. Yes, sir; I did.

Q. To Exhibit 115? A. Yes, sir; I did.

Q. To Exhibits 144 and 145?

A. Yes, sir; I did.

Q. Did you also give effect to Exhibit 175?

A. Yes, sir; I did.

Q. To Exhibit 133G? A. Yes, sir.

Q. Did you also give effect to Exhibit 28?

A. Yes, sir; I did.

Q. To Exhibits 36 and 37? A. Yes, sir.

Q. And in the preparation of this chart did you also give effect to Exhibits 45, 46, 47, and 48?

A. Yes, sir.

Q. Did you also give effect to Exhibit 42?

A. Yes, sir.

Q. And to Exhibit 41? A. Yes, sir.

Q. And to Exhibit 106?

A. Yes, sir; I did. [2495]

Q. And to defense Exhibits "T" and "V"?

A. Yes, sir; I did.

Q. Did you give effect to Exhibit 53?

A. You mean Exhibit 35?

Q. I am referring to an account in the Bank of America, Grand Lake Branch?

A. I have that as Exhibit 35.

Q. Did you give effect to Exhibit 35?

(Testimony of A. V. Brady.)

A. Yes, sir.

Q. That is correct. Did you give effect to Exhibit 49? A. Yes, sir; I did.

Q. And to Exhibits 38 and 39?

A. Yes, sir; I did.

Q. Did you give effect to Exhibit 139?

A. What exhibit is that, please?

Q. That is an invoice relative to the purchase of— A. Yes, sir; I did.

Q. And to Exhibit 174, which is an exhibit headed "50-52 Mason Street, San Francisco office Improvements, Fixtures and Equipment."

A. Yes, sir; I did.

Q. Did you give effect to Exhibit 147A?

A. Yes, sir; I did.

Q. Did you also, in preparing this exhibit, give effect to the account of Elmer Remmer in the ledger of Cal-Neva, which is [2496] here in evidence, and to the schedule prepared and introduced in evidence by Mr. Weaver in relation thereto?

A. Yes, sir; I did.

The Court: Do you have that exhibit number?

Mr. Avakian: Cal-Neva ledger is 146.

Mr. Campbell: And 172, the schedule.

Q. And Exhibit 176, which consists of two checks signed by Albert Villaudy?

A. Yes, sir; I did.

Q. I believe you stated you gave effect to Exhibit 172? A. Yes, sir.

Q. Did you also give effect to Exhibits 40 and 40A? A. Yes, sir; I did.

(Testimony of A. V. Brady.)

Q. And to Exhibit 144?

A. Yes, sir; I did.

Q. To Exhibits 108 and 109?

A. Yes, sir; I did.

Q. Did you also, in preparing this chart, give effect to Exhibit 140?      A. Yes, sir; I did.

Q. And to Exhibit 53?      A. Yes, sir; I did.

Q. And to Exhibits 13 and 14?

A. Yes, sir; I did.

Q. Did you also give effect, in preparing this chart, to [2497] Exhibits 1 to 6, inclusive?

A. Yes, sir; I did.

Q. Have I now covered, Mr. Brady, the exhibits which you took into consideration in preparing this chart?

A. I believe that you have, Mr. Campbell.

Mr. Campbell: It will be offered in evidence as government's Exhibit 183.

Mr. Avakian: Your Honor, we have a number of specific grounds of objection to this exhibit, in addition to the general ground it is incompetent, irrelevant, and immaterial, based on the witness' conclusion of law, and after stating the more specific grounds, I would like the opportunity to call your Honor's attention to a case which we think is directly on it.

The Court: We will excuse the jury.

(Jury and alternate jurors admonished and excused at 1:15 p.m.)

(In the absence of the jury.)

(NB 339 pp 24-47.)

2:45 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. BRADY

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Mr. Campbell: At the time of the recess I had offered [2498] in evidence government's Exhibit 183 for identification and an objection is pending. I renew my offer.

The Court: Objection overruled and Exhibit 183 may be admitted in evidence.

Q. Now, Mr. Brady, with relation to government's Exhibit 183, did you also cause to be prepared an enlargement of that chart?

A. Yes, sir; I did.

Mr. Campbell: I will ask to have this marked, bearing the same number as Exhibit 183. I presume it may be 183A.

The Court: Is that to be offered in evidence also?

Mr. Campbell: Yes, sir.

Mr. Avakian: If it is a duplicate of something already in evidence, we do not see the propriety of putting in an identical exhibit simply as an enlargement. If counsel wants to use it for the ease and facility of examination of the witness, it may be used.

(Testimony of A. V. Brady.)

Mr. Campbell: That is the purpose of the offer, that it may be clearer.

Mr. Avakian: We have no objection to that use, but do object to it being put in evidence as a duplication.

The Court: It will be admitted in evidence as 183A

Mr. Campbell: With the Court's permission, I would like to put this on the table facing during these questions. [2499]

The Court: Mr. Campbell, when you refer to any item on the duplicate, point it out so counsel can follow it on their copy of the original exhibit.

Q. Now, Mr. Brady, according to this chart which you have prepared, the original of which is marked 183, what is the amount of total assets as shown by that chart as of December 31, 1943?

A. Total assets, \$170,789.89.

Q. And it is true, is it not, that the detail of each of those assets is set forth under the heading of 1943 of that chart?

A. Yes, sir.

Q. You have 183 before you?

A. Yes, I do, Mr. Campbell.

Q. And will you state the amount of assets and liabilities of Mr. Remmer as shown by that chart as of December 31, 1944?

A. The assets \$210,408.26; the liabilities, \$23,182.93.

Q. And as of December, 1945?

A. Total assets end of 1945, \$437,311.05; the total liabilities at the end of 1945 is \$189,160.32.

(Testimony of A. V. Brady.)

Q. And as of December 31, 1946?

A. December 31, 1946, total assets, \$1,004,985.36; total liabilities, \$522,294.47.

Q. Now, Mr. Brady, as shown by that chart, what was the net worth of Elmer Remmer as of December 31, 1944?

A. 1944, net worth was \$187,225.33. [2500]

Q. And what was the net worth as of the beginning of 1944, which is to say, December 31, 1943?

A. \$141,837.12.

Q. What is shown by that exhibit as being the increase in net worth of the defendant, Elmer Remmer and his wife, Helen Remmer, for the year 1944?

A. The increase in net worth for 1944, is \$45,388.21.

Q. And what is the increase in net worth as shown by that chart in the year 1945?

A. The increase in net worth for 1945 is \$60,925.40.

Q. And what is the increase in net worth for the year 1946?

A. The increase in net worth for the year 1946 is \$234,510.16.

Q. Now on that chart have you added to the increase in net worth the federal income taxes paid as shown by Exhibits 13 and 14?

A. Yes, sir; I have.

Q. And those are the figures set forth on the chart immediately following the items of increase in net worth?

A. Yes, sir.

(Testimony of A. V. Brady.)

Q. And with regard to living expenses, have you left that item blank as to each of the years?

A. Yes, sir; I have.

Q. Now in Exhibit 183, have you arrived at a figure of total income for each of the years, 1944 to 1946, based upon the increases in net worth plus the income taxes paid during [2501] the course of the three years?

A. Yes, sir; I have.

Q. And will you give that figure for each of the years, 1944 to 1946, inclusive?

A. Total income 1944 is \$50,747.91; total income for 1945 is \$71,065.40; 1946 total income, \$254,285.42.

Q. Now on the chart have you subtracted from those totals the total amount of income reported for each of the years by Elmer Remmer and his wife, Helen Remmer?

A. Yes, sir; I have.

Q. And what, according to the chart and the figures making it up, have you found to be the difference between the total income and the income reported for each of the three years, 1944 to 1946, inclusive?

A. The difference for 1944 is \$31,747.91; for 1945, the difference is \$11,747.04; for 1946 the difference is \$231,795.84.

Q. Now assuming, Mr. Brady, that the net taxable income of Elmer Remmer and Helen Remmer for the year 1944, on a community property basis, was the sum of \$50,747.91, which was reported on separate returns of the husband and wife; assuming further that, as disclosed by the returns of that

(Testimony of A. V. Brady.)

year, there were no dependents, and assuming that each was entitled to all of the deductions claimed on his or her returns for the year 1944, that is, as disclosed by Exhibits 1 and 2, respectively, what then would have been the income tax due to [2502] the United States from Elmer Remmer and from Helen Remmer for the year of 1944?

Mr. Avakian: Your Honor, to that question I want to make the objection based upon the grounds presented in connection with Exhibit 183, that it is incompetent, irrelevant, and immaterial, that it calls for conclusions of law, and more specifically that it is based upon assumptions of fact which are not covered by the evidence and upon assumptions of fact which are contrary to the evidence, which have been specifically enumerated to your Honor in the absence of the jury in connection with Exhibit 183, which we will be happy to go into again if your Honor desires.

The Court: Objection overruled. Answer the question.

A. The total tax liability for Elmer Remmer in 1944 would be \$10,821.86; total tax liability for Helen L. Remmer for 1944 would be \$10,821.86.

Q. And will you state the amount reported by them as income tax due for that year 1944 in their returns, Exhibits 1 and 2?

A. Tax disclosed on the returns were \$2,570 on the return for Elmer Remmer and a similar amount on Helen L. Remmer's return.

Q. Mr. Brady, assuming that during the year



(Testimony of A. V. Brady.)

1945 the net taxable income, on a community property basis, of the defendant, Elmer F. Remmer, and his wife, Helen L. Remmer, was the sum of \$71,065.40, and assuming further that they had no dependents and reported their income on a community property basis, and [2503] assuming further that they were entitled to all of the deductions claimed by them on their returns for 1945, being evidenced here as Exhibits 3 and 4, respectively, what then would have been the tax owed by each of them for the year 1945?

Mr. Avakian: Just a moment, your Honor. We object to that question likewise on the ground it is incompetent, irrelevant and immaterial; calls for the witness' conclusions of law, and more specifically it assumes facts which are not in evidence and assumes facts which are contrary to the uncontradicted evidence, which we have more specifically enumerated to your Honor in connection with Exhibit 183 and which we will be glad to enumerate again if your Honor desires.

The Court: Objection overruled.

Mr. Campbell: Pardon me, I wish to make one addition to the question.

The Court: Have the question read.

(Question read.)

Q. Will you answer the question?

A. The total tax liability for 1945 of Elmer Remmer would be \$16,951.49. For Helen L. Rem-

(Testimony of A. V. Brady.)

mer for 1945 the total tax liability would be \$18,006.18.

Q. And what is the amount reported by them for that year, as disclosed on their returns, Exhibits 3 and 4?

A. Tax disclosed on the return of Elmer Remmer is \$13,072.02. Tax disclosed on the return filed for Helen L. Remmer for 1945 [2504] is \$14,074.29.

Q. Mr. Brady, assuming that for the calendar year 1946 the defendant, Elmer F. Remmer, and his wife, Helen L. Remmer, had a net taxable income, on a community property basis, of \$254,285.42, which was returned on a community property basis, that is to say, dividing the income, one-half to the husband and one-half to the spouse; assuming further that they had no dependents during the year 1946, and allowing to them all deductions as shown in evidence here, what then would have been the income tax liability of each, Elmer Remmer and Helen Remmer, for the year 1946?

Mr. Avakian: Your Honor, we object to that question on the ground it is incompetent, irrelevant and immaterial; it calls for conclusion of the witness on matters of law. It is based on assumptions which are contrary to the evidence and assumptions of fact not covered by the evidence, such as the assumption that the fact that there was \$65,000 in cash, an assumption contrary to the evidence that there were no partnerships in existence, and all of the other specific items which have been enumerated to your Honor in connection with the offer of Ex-

(Testimony of A. V. Brady.)

hibit 183, which we will be glad to go into in detail if your Honor desires.

The Court: Objection overruled. Answer the question.

A. Mr. Campbell, do you have in mind, too, that I show increase in contributions? [2505]

Q. Yes, I asked you considering all the deductions as disclosed by the deductions here.

A. The total tax liability for Elmer Remmer for 1946 would be \$86,069.50. The total tax liability for Helen L. Remmer for 1946 would be \$86,069.50.

Q. And what is the amount of income tax which was reported by Elmer Remmer and Helen Remmer on their 1946 returns, as disclosed by the Exhibits 5 and 6, respectively?

A. The total tax disclosed on the return for Elmer Remmer was \$2,776.87 and a similar amount was shown on the return filed for Helen L. Remmer.

Q. Now, Mr. Brady, for the three-year period, 1944 to 1946, inclusive, and based upon figures which you gave as to the income tax which would have been due under the facts which I gave you to assume in the questions, what would then be the difference between the income tax reported on the three-year returns and the tax which you found to be due from the income as stated in government's Exhibit 183?

A. Mr. Campbell, do you want that—

Q. The total for the three years, yes.

Mr. Avakian: Your Honor, may we have a moment, before the witness answers, to confer?

The Court: Yes.

(Testimony of A. V. Brady.)

Mr. Avakian: Thank you, your Honor.

The Court: Do you understand the [2506] question?

A. I do.

The Court: You may answer.

A. For Elmer Remmer the difference is \$95,-423.96. For Helen L. Remmer the difference is \$95,476.38, or a total of both of \$190,900.34.

Q. That figure which you have given me for the two would represent the difference in tax reported and that which would have been due, assuming the facts which I gave you in my hypothetical question; is that correct?

A. Yes, sir.

Mr. Campbell: You may cross-examine.

**Cross-Examination**

By Mr. Avakian:

Q. Mr. Brady, let me ask you preliminarily with regard to Exhibit 183, whether in the preparation of that exhibit you treated all of the net worth of each of the enterprises shown on the exhibit as belonging entirely to Mr. Remmer?

A. I took the net worth as shown on the various enterprises, based on statements admitted here in evidence, Mr. Avakian. For instance——

Q. (Interrupting): Pardon me—were you going to use an example?

A. For example, B. & R. Smoke Shoppe, I used——

Q. Let us take the Menlo Club as an example, and for the Menlo Club you have shown at 1946 a

(Testimony of A. V. Brady.)

net worth of \$192,836.47. That is the total net worth of the Menlo Club business as shown on [2507] the exhibit prepared by Mr. Weaver and in evidence here, is it not? A. That is correct.

Q. And you, in preparing Exhibit 183, took the entire net worth of the Menlo Club as Mr. Remmer's net worth, rather than using only his partnership equity in that business; isn't that true?

A. No, I took this amount because I believed from the evidence it shows it was his business.

Q. Well, I am trying to get what figure. On that same exhibit—let me get it for you—I will hand you for your use Exhibit 165, Mr. Brady, and that shows the net worth of the Menlo Club on December 31, 1946, as \$192,836.47, does it not?

A. That's right.

Q. And then farther down on that same exhibit there is the heading, "Capital Accounts per Books," and then there is listed the names of Harold Maundrell, Thomas Turner, Wm. Fricker, Elmer Remmer, Wm. Kyne, Massie Ditto and Oscar Nelson, with an amount opposite each name?

A. That is true.

Q. And amount opposite Elmer Remmer's name for December 31, 1946, under the heading "Capital Accounts per Books," is \$39,508.60, is it not?

A. That is correct.

Q. Instead of using that figure, you used, as Mr. Remmer's [2508] investment in the Menlo Club the total net worth of the club of 192 thousand, did you not?

(Testimony of A. V. Brady.)

A. Well, the reason why that was taken into account——

Q. Tell me whether that is what you did?

A. Yes, we took 192 thousand.

Q. So what you did, in preparing 183, was to treat the Menlo Club as being Mr. Remmer's sole enterprise, rather than a partnership; isn't that true?

A. As his net worth business, yes.

Q. Without going into detail at this time on the others, is that likewise true with respect to the other businesses mentioned, the B. & R. Smoke Shoppe, Day-Night Cigar Store, 110 Eddy Street, and Transit Smoke Shop?

A. Yes, we considered those Mr. Remmer's personal businesses.

Q. And in preparing Exhibit 183, you treated the entire assets of each of those businesses as Mr. Remmer's assets; is that true?

A. Mr. Avakian, the figure that we were able to secure here may not be all the income. We do not know what was in the safe deposit boxes, for example.

Q. Well, can you answer my question? Let us have the question.

A. If you——

Q. Let us have the question read.

(Question read.)

A. Well, we treated as Mr. Remmer's businesses the net worth [2509] as disclosed on these various exhibits.

Q. What I am getting at is this, Mr. Brady—in

(Testimony of A. V. Brady.)

preparing Exhibit 183, you did not treat any of the businesses which I just named as partnership, but rather treated each of them as Mr. Remmer's sole enterprise; isn't that true?

A. No, I would say that *is true*, Mr. Avakian, because I did not make up these statements. I just wrote down on this schedule, Exhibit 183, the net worth as disclosed by the people that did make the examination. I made no examination of these books and records.

Q. I understand that, but in the exhibit relating to the 110 Eddy Street, for example, there is a figure which shows the net worth of the entire business and then also on that same exhibit there are amounts showing the capital account according to the books, of each of the partners. Now when you used that exhibit in preparing Exhibit 183, you entered as Mr. Remmer's net worth on Exhibit 183 the total amount of the 110 Eddy Street net worth rather than the amount shown on that same exhibit as his partnership capital account; isn't that true?

A. I don't have a copy of 163.

Q. I call your attention to the fact that on 110 Eddy Street, which is Exhibit 163, in addition to the net worth of the business, there are various capital accounts per books listed in the lower portion of page one; that is true, is it not? [2510]

A. That is true.

Q. Now in preparing Exhibit 183, did you not take the amount of Mr. Remmer's capital account shown on the lower portion of that exhibit, but

(Testimony of A. V. Brady.)

rather took the figure shown as the total net worth of the entire business, did you not?

A. Yes, we took the net worth as shown on the business being Mr. Remmer's.

Q. And that is true of each of the businesses that are enumerated; isn't that so, Mr. Brady?

A. Well, I don't know. I would like to see the other exhibits because I believe some of these books did not show all the assets, so it would be pretty hard to get a correct net worth from the books.

Q. I intend to go into that detail later, Mr. Brady, so we will defer that for the moment. Now you stated, Mr. Brady, you were a Revenue Agent with the office of the Bureau of Internal Revenue for 22 years prior to this present position, and then I understood you to say for approximately the last five years you have been a technical advisor in the Penal Division of the Bureau of Internal Revenue in San Francisco; is that correct? A. Yes.

Q. And your immediate superior in that position during the last five years has been, and still is, Mr. Campbell, the chief prosecutor here? [2511]

A. Correct.

Q. And you were assigned as accountant to Mr. Campbell to assist his office in tax investigations?

A. I was asked to make such computations.

Q. Generally your employment is to assist Mr. Campbell's office? A. Yes.

Q. And you work directly under his supervision?

A. Yes.

Q. In the preparation of Exhibit 183, did you



(Testimony of A. V. Brady.)

receive any instructions from Mr. Campbell in any respect whatsoever?      A. Yes, I did.

Q. Were there any instances on Exhibit 183 where Mr. Campbell instructed you as to the particular figure that you should enter on the exhibit?

Mr. Campbell: Objected to as immaterial, if the Court please.

The Court: Objection overruled. Answer the question.

A. Yes.

Q. And did Mr. Campbell instruct you, Mr. Brady, that in preparing Exhibit 183 you should show the entire net worth of each of these businesses which I have named as Mr. Remmer's net worth?      A. Yes.

Q. And I call your attention to the fact, Mr. Brady, that on [2512] Exhibit 183 the years are listed without any particular date of the year. It is true, is it not, that in preparing a computation of net income on the net worth basis, the computation should be made as of the last day of each year?

A. I believe Mr. Campbell, when he read this off, told me December 31st, Mr. Avakian.

Q. And it was your intent, was it not, to include the assets and liabilities as of December 31st of each year?      A. Yes.

Q. And you did not intend to include any assets or liabilities that were in existence on some other day in any of these years unless that same asset or liability was in existence on the very last day of each year?      A. That is correct.

(Testimony of A. V. Brady.)

Q. In other words, an asset that was in existence in the middle of the year would have no bearing in the computation of net income on net worth basis if it were not also in existence at the end of the year; isn't that true?

A. If it was in existence at the end of the year it applied to the net worth statement.

Q. So if it were in existence at the middle of the year and not at the end of the year, it would be immaterial for this purpose?

A. Well, it might be transferred to another asset.

Q. If that asset is not in existence, then that wouldn't be [2513] an asset? A. Correct.

Q. Mr. Brady, I call your attention that on Exhibit 183 you have included as cash on hand at the end of 1946 the sum of \$65,000. Can you refer me to the exhibit or testimony in this case which shows that that \$65,000 sum was on hand in Mr. Remmer's possession on December 31, 1946?

Mr. Campbell: Objected to as not proper cross-examination, unless he states that the source he obtained it was from something in the evidence. Then he can be asked to refer to the testimony.

Mr. Avakian: Let me ask a preliminary question.

Q. Did Mr. Campbell instruct you to put that \$65,000 figure there? A. Yes.

Q. And did you base the insertion of that \$65,000 figure on Mr. Campbell's instructions?

A. Not entirely.

Q. Can you point to any evidence or testimony

(Testimony of A. V. Brady.)

in this record which shows that Mr. Remmer had \$65,000 cash on hand at the end of 1946, that is, on December 31st?

A. I know the check, Exhibit 115——

Mr. Campbell: Wait a minute; let him finish.

The Court: Have you finished?

(Question and answer read.) [2514]

A. I said 115 and I stopped. I didn't finish.

The Court: Finish the answer.

Q. Finish your answer, Mr. Brady.

The Court: Let us have the question and answer.

(Question and answer read.)

The Court: Proceed.

A. I believe Mr. Campbell took into account 115 and the testimony of Mr. Kyne that this \$65,000 had not been retained.

Q. You say you believe Mr. Campbell took that into account?

A. Yes; you asked me why we took \$65,000——

Q. So I may make myself clear—Mr. Campbell has stipulated here he is not an accountant and I am trying to find out from you, as an accountant, the basis for your computation, as an accountant, in the preparation of Exhibit 183 and in giving your testimony here.

Mr. Campbell: Objected to as argumentative.

The Court: Just propound the questions.

Q. Now with respect to Exhibit 115, I show you that, and that is a check drawn on the Menlo Club,

(Testimony of A. V. Brady.)

dated November 7, 1946, in amount of \$65,000, payable to W. E. Kyne, endorsed W. E. Kyne, and marked on the face of it "Loan to Elmer Remmer," is it not?      A. That is correct.

Q. And you have in mind Mr. Kyne's testimony that this \$65,000 was placed in Box 48 at the time that it was cashed and that the [2515] money in that box was used from time to time as needed in the various businesses?

Mr. Campbell: Objected to as argumentative and not within the scope of direct examination, not proper cross-examination. He has stated the source of the material which he placed in here, the exhibits as to each one, and the instructions which he was given. What the witness may or may not have had in mind, I suggest is immaterial.

Mr. Avakian: Your Honor, we are entitled to get the accounting analysis of the accountant of the evidence that pertains to this point which, on Mr. Campbell's instructions—

The Court: You may answer the question.

A. I have no recollection, Mr. Avakian, of Mr. Kyne saying that he put that money in Box 48. My recollection of the testimony was he cashed the check, gave the money to Mr. Remmer.

Q. And is that, so far as you understand, the basis for Mr. Campbell's conclusion that \$65,000 was still on hand December 31, 1946?

Mr. Campbell: That is objected—

The Court: Objection sustained.

Mr. Avakian: Your Honor, he testified that the reason Mr. Campbell had—

(Testimony of A. V. Brady.)

The Court (Interceding): I don't believe this witness can testify to the basis of anyone else's conclusion except his own. [2516]

Mr. Avakian: We are in this position, Mr. Campbell is in effect testifying without taking the stand and being cross-examined.

The Court: Objection sustained.

Q. Is it not true, Mr. Brady, that the inclusion of \$65,000 item as an asset of Mr. Remmer's on December 31, 1946, would be improper and erroneous, from an accounting point of view, unless Mr. Remmer actually had that money on December 31, 1946?

A. You are making an assumption there he didn't have it.

Q. I am asking the question—read the question.

(Question read.)

Mr. Campbell: Objected to as incompetent.

The Court: You may answer the question.

A. Well, if we had some proof that he didn't have it, I would say it should not be there.

Q. Now can you answer my question?

A. May I have the question?

The Court: Yes, read the question.

(Question read.)

A. Well, if he didn't have the money, there was any contention that he didn't have it, I would say it would be wrong. For instance, if he repaid the \$65,000.

(Testimony of A. V. Brady.)

Q. It wouldn't matter what he did, the important thing would be, did he have \$65,000 cash on hand December 31, 1946, wouldn't that be the important thing in determining whether the [2517] inclusion of that particular item is correct from an accounting point of view?

A. If he didn't have \$65,000, it would be incorrect.

Q. Mr. Brady, in testifying as to tax you computed, would be due on the amount of income which you have computed on Exhibit 183, and in comparing that with the amount of tax shown on Mr. Remmer's return, and then computing the difference between the tax shown on Mr. Remmer's return and the tax which you computed due, did you make any allowance for the fact that the various persons designated as partners of these different enterprises paid income tax on their returns on the portion of the income of those enterprises?

Mr. Campbell: Objected to as not proper cross-examination. He was only asked as to specific matters.

The Court: Answer the question.

A. I did not.

Q. So you did not mean to imply, then, did you, by your testimony, Mr. Brady, that the United States of America was deprived of taxes from somebody in the total amounts that you have testified to as the difference between what Mr. Remmer paid and what you included—

(Testimony of A. V. Brady.)

Mr. Campbell: That is objected to.

The Court: Objection sustained.

Q. It is true, is it not, Mr. Brady, that as a matter of proper tax accounting, and as a matter of procedure of the [2518] Bureau of Internal Revenue, that in the event it is determined that a particular amount of income should have been taxed to Mr. A rather than to Mr. B, and if it is determined that Mr. B actually did pay tax on that account, that in designating that income to Mr. A, a refund should be allowed in the amount of taxes paid by Mr. B?

Mr. Campbell: Objected to as immaterial to the issues.

The Court: Objection sustained.

Mr. Avakian: Your Honor, we would like to be heard because we think it is an important point on the question whether taxes were evaded.

The Court: The ruling will stand.

Q. In your Exhibit 183 I find no reference in the liabilities to any obligation of Mr. Remmer to one Robert L. Jeffers. Will you tell me, Mr. Brady, whether you are familiar with the testimony in this case, to the effect that on September 27, 1946, Mr. Remmer borrowed 50 thousand dollars from one Robert L. Jeffers?

Mr. Campbell: Objected to as incompetent and immaterial, not proper cross-examination, whether or not he is familiar with the testimony.

The Court: Objection sustained.

Q. Mr. Brady, if you omitted from Exhibit 183

(Testimony of A. V. Brady.)

any liability owed by Mr. Remmer to Mr. Jeffers on December 31, 1946, your computation of net worth would be erroneous to the extent of [2519] that liability, would it not?

Mr. Campbell: Objected to as assuming a fact not in evidence, that there was a liability on December 31, 1946.

The Court: Objection sustained.

Mr. Avakian: Your Honor, may we be heard on that?

The Court: The ruling will stand.

Q. In the preparation of Exhibit 183, did you give any consideration whatsoever to defendant's Exhibit A-1, which is a note dated September 27, 1946, from Elmer Remmer to Robert L. Jeffers, in amount of 50 thousand dollars?

A. No, I did not.

Q. Did you have any discussions with Mr. Campbell whether or not you should show any liability in Exhibit 183 with respect to that amount?

A. No, I did not.

Q. Did Mr. Campbell instruct you as to the liabilities which you should include in preparing Exhibit 183? A. Yes.

Q. Did he give you a list of liabilities to include?

A. No, he told me what liabilities to put down here.

Q. And are the ones which you have set forth in Exhibit 183 the ones which he told you to put in there? A. Yes.

Q. And did he say anything to you about



(Testimony of A. V. Brady.)

whether or not you should include any liability with respect to defendant's [2520] Exhibit A-1?

A. No, he did not. Do you want to know why?

Mr. Avakian: Why he did not? I assume you wouldn't know why he did not tell you. I am not asking that, Mr. Brady.

Q. Now, Mr. Brady, I note that in Exhibit 183 you have an item, "Cash in Safety Deposit Boxes," with a question mark entered after each of the years shown on the exhibit. Did you insert that question mark because you didn't know the amount of cash in the safe deposit box or boxes at the end of each year?

A. I was instructed to put it that way because there was no evidence as to the amount of cash in the box at any particular period.

Q. You say you were instructed—Mr. Campbell instructed you? A. Yes.

Q. And is it not true, Mr. Brady, that to the extent that there might have been cash in the safe deposit boxes at the end of any of these years, your net worth computations would to that extent be erroneous?

A. Well, it might be materially increased if we know the amount there. We left nothing, but if there was something there, it certainly would increase the assets of Mr. Remmer.

Q. For that particular year? A. Yes.

Q. And in the event the amount in safety deposit boxes changed from the end of one year to the end of the next year, the [2521] amount of your

(Testimony of A. V. Brady.)

net worth computation as shown on Exhibit 183 would be incorrect, would it not?

Mr. Campbell: Objected to as argumentative. It is apparent from the face of the exhibit that if an asset is changed or added to it changes the face of the document. I suggest this is all argumentative.

The Court: You may answer the question.

Mr. Avakian: It is not argumentative.

A. Any asset that is changed is bound to change the increased net worth that way, yes, Mr. Avakian.

Q. Now it is true, is it not, Mr. Brady, that in an accounting analysis, the term "net worth" means the difference between the total assets and the total liabilities? A. At a given period.

Q. Yes, at a given point of time; isn't that true?

A. Yes.

Q. And isn't it true, Mr. Brady, that it is impossible to make an accurate determination of net worth if you are unable to determine the amount of any particular asset or liability that is in existence as of that particular time?

Mr. Campbell: Objected to as argumentative.

The Court: You may answer the question.

A. Mr. Avakian, if we know what total assets hadn't been discovered, probably carried in some other name, we might increase this picture [2522] considerably.

Mr. Avakian: I ask that be stricken.

The Court: It may go out.

Mr. Avakian: Would you like to have the question read, Mr. Brady? A. Yes.

(Testimony of A. V. Brady.)

(Question read.)

A. To get an accurate net worth, yes, Mr. Avakian.

Q. It would be impossible to get an accurate net worth?

A. It would be impossible unless we knew the amount of the assets.

Q. Now, Mr. Brady, did you hear something in this case to the effect that there was money in some amount in safes and safety deposit boxes, during the entire period covered by your Exhibit 183?

Mr. Campbell: Objected to as immaterial, whether he heard it or not.

The Court: Let me see that Exhibit 183. Where is that item?

Mr. Avakian: Item 125.

The Court: There seems to be no amount set here as to cash in the safety deposit boxes.

Mr. Avakian: That is right.

The Court: I will sustain the objection.

Mr. Avakian: The purpose of the question, may I state the purpose of it? That is the point here which I am driving at, which may not be clear to your Honor. The purpose of the [2523] question, your Honor, is to show that there is evidence of an asset, but the evidence does not show the amount of the asset, and the significance of that, your Honor, then is that if there is an asset, the amount of which can't be determined, then to that effect

(Testimony of A. V. Brady.)

there is an uncertainty in the net worth that is computed.

The Court: Yes, but they did not insert any amount in here.

Mr. Avakian: That is the point, your Honor. The asset is there, but the amount is not inserted.

The Court: Objection will be sustained.

Q. Now I note in preparing Exhibit 183 you have shown certain amounts as representing Gallagher & Burton whiskey at the end of 1943, 1944, and 1945, with no amount for 1946, and then I note that subsequently, as another asset, you have shown, "Due from Bank Club for 900 cases of whiskey," and an amount for the end of 1946. Those two items, I take it, are related in Exhibit 183, is that true, Mr. Brady.

A. That is my understanding, yes.

Q. Now, did Mr. Campbell instruct you to set up those two items in that way?

A. I believe you will find, Mr. Avakian, that Mr. Weaver testified as to the Gallagher & Burton whiskey and at the end of 1944——

Q. (Interrupting): Perhaps you didn't understand my question. [2524] My question was, did Mr. Campbell instruct you to set up Exhibit 183 the way you have in respect to those items?

A. Yes.

Q. I note the figures that Gallagher & Burton whiskey in 1945 amount due was \$21,191.50 and then the amount that is due the end of 1946 shown as \$29,979?

A. Yes.

(Testimony of A. V. Brady.)

Q. And the difference between those two is approximately \$2800, isn't it, Mr. Brady?

A. The difference is that, yes.

Q. Now you are aware, are you not, of the testimony in this case that Mr. Remmer was not paid by the Bank Club for that whiskey in the amount of \$29,989 until July 30, 1947?

A. Yes, I heard that.

Q. And isn't it true that in the case of a taxpayer, who is on the cash basis, the amount that is receivable on the sale of merchandise that is not paid for until a later date, should not be taken into income until the later date on which he actually gets the money?

A. I would say any profit he realized on that, that profit would not be taken up until it was realized.

Q. From an accounting point of view, the effect of that Gallagher & Burton whiskey transaction has been to put the \$2800 into Mr. Remmer's 1946 tax year?

A. No, it has not. I might tell you why. I believe Mr. [2525] Weaver testified that at the end of 1945 there were some 800 cases of whiskey and there were 900 cases that were transferred to the Bank Club. I have recollection there was no profit in that transaction at all, so if the item was left out at the end of 1946, it would be a great distortion. If there was a substantial profit, or any profit, probably that profit should not be reported

(Testimony of A. V. Brady.)

on net worth statement until it was realized, but I do not think is the case here, Mr. Avakian?

A. Now, Mr. Brady, let me ask you this as a preliminary question and you can answer it yes or not. You stated that you are employed in Mr. Campbell's office as a technical advisor. Can you tell us when you first started work on the case of Elmer Remmer, approximately?

Mr. Campbell: Objected to as immaterial, not proper cross-examination.

The Court: I think he may answer.

A. My recollection is about March of 1950 I saw the case when it came up and I consulted with the attorney to whom it was assigned.

Q. And from that time until the present time you have, at various times during the period, worked on the case, is that correct?

A. Yes, I might be called, for instance, to make computations based on certain figures, etc., but I would not work on the case continuously. [2526]

Q. Now have you at any time, Mr. Brady, made any computations of increase in net worth of Mr. and Mrs. Remmer for these three years, which computations have been based on your own analysis as an accounting expert, independently of any instructions given to you by Mr. Campbell as to what to include in assets and liabilities?

Mr. Campbell: Objected to as not proper cross-examination.

Mr. Avakian: The witness is offered here as an expert, your Honor.

(Testimony of A. V. Brady.)

The Court: Objection sustained.

Q. Isn't it true, Mr. Brady, at some time prior to and during the period that you were assigned to this case, you have made computations of net worth of Mr. and Mrs. Remmer for the years 1944, 1945, and 1946 which are different from the computations set forth in Exhibit 183?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained. That is the same question I just ruled on.

Mr. Avakian: No, it is not, your Honor, it is a different question and it is offered for the purpose of impeaching the witness by showing prior inconsistencies.

The Court: The ruling will stand.

Mr. Avakian: Will your Honor permit us to be heard on that? [2527]

The Court: No, let us proceed.

Q. Now I note one of the assets which you have shown as described on Exhibit 183, as loan to Brice and Silverman in amount of 12 thousand dollars at the end of 1945 and four thousand dollars at the end of 1946. Can you refer me, Mr. Weaver, to any testimony or exhibit in this case which shows that that transaction with Brice and Silverman was a loan, as distinguished from an investment in business?

Mr. Campbell: Objected to as incompetent and improper, unless his testimony shows he put that there as the result of some testimony.

The Court: You may answer the question.

(Testimony of A. V. Brady.)

A. I did not review the evidence on that item there.

Q. You inserted it in this exhibit and in that fashion on instructions of Mr. Campbell?

A. Yes.

Q. And isn't it true, Mr. Brady, that if the Remmer transaction with Brice and Silverman was an investment made in a business in 1945, which business failed during the year 1945, and Mr. Remmer's loss in that investment was the amount of four thousand dollars, that it would be improper, from an accounting point of view, to show the transaction the way it is shown in Exhibit 183?

Mr. Campbell: Objected to as assuming facts not in evidence. [2528]

Mr. Avakian: That is the evidence and uncontradicted evidence. Mr. Maundrell's description of this transaction was this was an investment by Mr. Remmer made with Mr. Brice and Mr. Silverman in a night club in New York, which failed after eight days.

The Court: He may answer the question.

A. The way it is put on this statement——

Mr. Campbell: Object——

The Court: Answer the question.

A. If we had an investment at the end of 1945 of 12 thousand dollars and that investment was reduced to four thousand dollars, I would say our loss is reflected in our increase in net worth.

Mr. Avakian: May we have the question read. I think the witness missed the facts of the question.



(Testimony of A. V. Brady.)

(Question read.)

The Court: Now you may answer.

A. The increase we have in net worth took into account decrease in——

Mr. Avakian: He inserted facts different than in the question.

The Court: Clear it up.

Q. Can you answer the question I asked you?

A. I understand from your question, Mr. Avakian, that if a person had 12 thousand dollars at the end of 1945 and that [2529] one asset was reduced to four thousand dollars through a loss, that loss is taken into account in our increase in net worth.

Mr. Avakian: Let me rephrase the question.

Q. If I invested 12 thousand dollars in a business and during the same year, after a period of eight days, that business went broke and in liquidation of it I got back only four thousand dollars at the termination of that transaction you would not, in computing my net worth at the next year end, show any asset whatsoever with respect to that business, would you?

Mr. Campbell: Objected to as incompetent, assuming facts not in evidence and misleading.

The Court: Objection sustained.

Q. Let me come back to the specific situation, Mr. Brady. You have before you Exhibit 183?

A. Yes.

(Testimony of A. V. Brady.)

Q. I believe you refer to the Brice and Silverman item described in Exhibit 183 as a loan?

A. That is right.

Q. Now, Mr. Brady, will you assume these facts, for the purpose of asking the question: assuming that the 12 thousand dollars paid by Mr. Remmer to Brice and Silverman was not a loan, but rather was an investment with Brice and Silverman in a business; assume further that during the year 1945 that business failed, and assume further that as a result of the liquidation of that business, after it failed, Mr. Remmer at [2530] some time before the end of the year 1946 got back four thousand dollars. Now on those assumptions, Mr. Brady, isn't it true that it would not be proper to show the four thousand dollars as an asset that is listed on Exhibit 183 as of the end of 1946?

Mr. Campbell: Objected to as assuming facts not in evidence.

Mr. Avakian: Those are the facts, your Honor. Got back eight thousand dollars instead of four thousand dollars.

Mr. Campbell: That is not the basis of my objection. The evidence which exists of the check and check stub show that the amount was a loan and my recollection of Mr. Maundrell's testimony is also that it was a loan.

Mr. Avakian: May I read Mr. Maundrell's testimony?

The Court: We will excuse the jury until tomorrow morning at 10 o'clock.

(Jury and alternate jurors admonished and excused at 3:30 p.m.)

(In the absence of the jury.)

(NB 339—PP 72-74.)

February 5, 1952, 10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. BRADY

resumed the witness stand on further

Cross-Examination

By Mr. Avakian:

Mr. Avakian: I might state, your Honor, that Mr. Lohse was tied up with another matter this morning which he could not conveniently avoid and to substitute for him his partner, Mr. Fry, is here this morning.

Mr. Campbell: If the Court please, at the close of the session yesterday there was pending a question, to which objection was made. The objection was subsequently withdrawn by the government and the record will so show.

Mr. Avakian: I understand, your Honor, then that I may put that question to the witness at this time, and with your Honor's permission I will read the question to the witness.

Q. You will recall, Mr. Brady, that I was ques-

(Testimony of A. V. Brady.)

tioning you with respect to the Brice-Silverman matter, which is shown on Exhibit 183. The question put to you was as follows: Now Mr. Brady, will you assume these facts for the purpose of answering this question—assume that the 12 thousand dollars paid by Mr. Remmer to Brice and Silverman was not a loan, but rather was an investment with Brice and Silverman in a business; assume further that during the year 1945 that business [2532] failed and assume further that as a result of the liquidation of that business, after it failed, Mr. Remmer at some time before the end of the year 1946 got back eight thousand dollars. Now on those assumptions, Mr. Brady, isn't it true that it would not be proper to show the four thousand dollars as an asset that is listed on Exhibit 183 as at the end of 1946?

A. Well—

Mr. Campbell: I wonder if it would assist if the witness had before him the question, which is rather lengthy, in its written form.

Q. Do you have difficulty in understanding the question?

A. I would appreciate it. (Witness is handed question.) Well, Mr. Avakian, I think before I can answer that question yes or no, there are certain facts that should be taken into consideration. For instance, if Mr. Remmer advanced 12 thousand dollars as an investment, we would want to know the corporation he was investing in, whether the assets that represent the 12 thousand dollars, what they

(Testimony of A. V. Brady.)

consisted of. If they consist of a long-term lease, for instance, even though the business had failed, we would want to know the date in which the business opened and in which the business failed, and there are a number of facts, I think, that would have to be considered before the account could be wiped off entirely. For instance, supposing there was a long term lease, the business itself might fail but the lease might have a substantial value, so there would [2533] not be a four thousand dollar loss and would still represent part of that investment.

Q. So in order to answer that question correctly, you would need more facts than are in evidence here?

Mr. Campbell: Just a minute—I object to that as calling for conclusion of the witness.

The Court: Objection sustained.

Q. You would need to have before you, in order to answer that question correctly, the facts pertaining to various items that are included in your answer, is that right?

A. I would say yes.

Q. It is true, is it not, Mr. Brady, that an investment which an individual makes in a business, which he operates either as an individual or as a joint venture with other partners, which fails and which, as a result of that failure, results in a loss to him, provides the basis for a deductible loss for income tax purposes?

A. If the loss was claimed and determined, yes;

(Testimony of A. V. Brady.)

if a definite loss had been determined, it would be deductible loss.

Q. And in computing net income on net worth method, it would not be proper to include any assets of the taxpayer in the amount which represented an investment in a business of that kind which did fail before the end of the year and which, as a result of that failure, did produce a loss, is that true?

Mr. Campbell: Just a minute—objected to, if the court [2534] please, as a hypothetical question and as the same question to which the witness has stated he would have to have certain additional factors to answer.

The Court: I do not quite understand it that way. You may answer the question.

A. Well, Mr. Avakian, I believe that the question sounds very similar to the other one, in that you know that the business failed. The money that was invested in the business is represented by certain assets. Now if one of those assets was say a long term lease, it might have failed in that particular business, but they could reopen at that location with another business.

Q. Let me ask you this question, Mr. Brady, so we can see whether we can get the distinction between loan and investment in connection with computation of income on net worth method. If I loan you some money, let us say 12 thousand dollars, which you invested in a business, which you operated yourself and in which I had no interest as

(Testimony of A. V. Brady.)

an operator, and that business failed, the failure of your business would not provide me with any deductible amounts on account of the loan that I had made to you, except possibly by way of a bad debt, isn't that true?

A. I don't follow you, Mr. Avakian.

Q. You do not understand that question, all right. If I loaned you 12 thousand dollars and you invest it in your own [2535] business and then your business failed, the loan which I had made to you would still be carried as an asset of mine in my net worth statement, even though your business failed, isn't that true? A. Well, yes.

Q. Unless, as I say, you had become so bankrupt that your obligation could be wiped out as a bad debt.

A. Yes, unless it was determined a bad debt.

Q. If on the other hand, instead of loaning you money to use in your business, you and I joined forces in a joint venture, and I put some of my money into that business, in which you and I are going to have a joint interest, and then that business fails, I would then be entitled to a deductible loss to the extent that the failure of that business left me without any assets after its failure, isn't that true?

A. For instance, if there was no possible recovery of the assets, I would say yes.

Q. Now in your Exhibit 183, Mr. Brady, you have shown certain figures as assets of Mr. Remmer with respect to the 21 Club. Will you refer

(Testimony of A. V. Brady.)

me to any particular exhibits or testimony upon which that is based, for my clarification?

A. I believe Exhibit 106 of Revenue Agent Gould.

Q. Perhaps you could assist me, Mr. Brady, in referring me to the particular figure from Exhibit 106 from which you prepared Exhibit 183 in that respect. Let us take first December 31, [2536] 1943, you have the amount \$7676.53.

A. \$15,353.07.

Mr. Campbell: What is that figure?

A. That is the balance of the investment account and according to the testimony of, I believe, Mr. Pritchett and Mr. Kessell, they testified Mr. Remmer owned a 50 per cent of that equity.

Q. So you took the total investment shown on Exhibit 106 and took 50 per cent of that figure as representing Mr. Remmer's investment?

A. Correct.

Q. And was that same method used in connection with the amounts shown for the ends of 1944, 1945, and 1946?

A. Here is 1944. Investment account \$13,809.87.

Q. And the figure you have on your exhibit is \$13,004.93?

A. I took one-half of \$13,809.87, \$6,904.93, plus notes payable account, \$6,100, to arrive at \$13,004.93.

Q. So that to begin with, you took the total investment account of the entire business and took half as Mr. Remmer's share?

A. That is right.



(Testimony of A. V. Brady.)

Q. And then added the notes payable?

A. Correct.

Q. How did you arrive at the 1945 figure of \$10,417.97?

A. Investment account at the end of 1945 shows \$3,435.94; one-half of that would be \$1,717.97, to which was added notes payable [2537] of Mr. Remmer, \$8,700, making a total of \$10,417.97.

Q. Then would you explain how you arrived at the 1946 figure?

A. 1946 the investment account shows here \$23,027.69; one-half of that, \$11,513.85. There is no accounts payable shown at the end of 1946.

Q. So that in the case of the 21 Club, in preparing Exhibit 183, you did give effect to the partnership between Mr. Remmer and Mr. Pechart and Mr. Kessell?

A. Yes, sir, I did.

Q. Now the next item is the San Diego Social Club, and can you tell me the sources from which the figures shown on Exhibit 183 were obtained for that?

A. We took Exhibits "T" and "V."

Q. And those are copies of the return of Revenue Agent Gould, who testified here earlier in this case?

A. Yes.

Q. And by using those figures you likewise gave effect to a partnership between Mr. Remmer, Mr. Pechart and Mr. Kessell in that enterprise?

A. Yes, sir.

Q. Now, Mr. Brady, for your assistance in following this question that I am going to ask you, I am going to hand you a sheet of papers, so that you

(Testimony of A. V. Brady.)

can make notes on the amounts that I mention in my question as we go along. For the purpose of this question, Mr. Brady, will you assume the following facts: [2538] Assume that instead of the amounts shown for December 31, 1946, as Mr. Remmer's equity or net worth on Exhibit 183, you substituted the following figures taken from sources which I will state in the question—first of all, with respect to the B. & R. Smoke Shoppe, for the purpose of my question eliminate the bank roll of 20 thousand dollars shown on Exhibit 169, which Mr. Weaver said was inserted in Exhibit 169 on his assumption that the bank roll at the end of 1945 remained in existence until the end of 1946.

Mr. Campbell: Just a minute—I am going to object to an argument of counsel in the hypothetical question. A hypothetical question might be proper, assuming all of the facts in evidence, but to discuss the evidence, by whom it was given, and the nature of the testimony, I do not believe is proper in a question of this kind.

Mr. Avakian: I only intended, your Honor, to identify the factual matter involved in the question.

The Court: You might state the hypothetical question without referring to any particular portion of the testimony or evidence, as long as it is based on the evidence, or a reasonable inference of evidence.

Mr. Avakian: Very well, that is agreeable.

Q. Did you follow that first adjustment that my question calls for, Mr. Brady, the elimination from

(Testimony of A. V. Brady.)

the B. & R. Smoke Shoppe bank roll from December 31, 1946, the sum of \$20,000? [2539]

A. I have a note of that.

Q. Secondly, assume that in lieu of the figure \$28,643.47 shown for the Day-Night Cigar Store, you used as Mr. Remmer's share of the net worth of that business the figure of \$8,012.15. Next for the 110 Eddy Street, in lieu of the net worth figure on Exhibit 183 of \$33,210.35, use the sum of these two figures, the amount of \$8,824.53 and \$5,985.44. Next, with respect to the Menlo Club, in lieu of the figure of \$192,836.47 shown on Exhibit 183, use the figure from Exhibit 165 of \$39,508.60. Next, with respect to the Transit Smoke Shoppe, adjust the figure of \$32,641.46 shown on Exhibit 183 by the amount of \$16,005.50, which is shown in Exhibit 120. Next, with respect to the item of cash, eliminate the 65 thousand dollars shown on Exhibit 183. Next, with respect to the Brice-Silverman transaction, eliminate the four thousand dollar asset shown on Exhibit 183, and finally add, as a liability at the end of 1946, an obligation of 50 thousand dollars to Robert L. Jeffers, and after you have made computation, will you tell me if that adjustment would result in a net worth figure at the end of 1946, of \$135,325.82, rather than the figure of \$482,690.89 shown on Exhibit 183?

Mr. Campbell: I object to the question as incompetent. It does not purport to be a hypothetical question, but to ask the witness to make certain computations which, if they are relative, should be

(Testimony of A. V. Brady.)

made in the defendant's case. So far as [2540] the result of such computation is concerned, if the Court rules that the question is competent or material, I will accept counsel's computation of what the result would be. It is a question of adding or subtracting figures, but I do not believe it is proper cross-examination or within the scope of direct examination.

The Court: Objection will be sustained.

Mr. Avakian: Could I explain to your Honor the basis for the figures contained in the question, because they are all taken from the evidence.

The Court: No.

Mr. Avakian: Your Honor, we would like to explain to your Honor, either in the presence or absence of the jury, why we feel it is proper cross-examination. We can cite authority that in cross-examination of an expert witness it is proper—

The Court (Interceding): Very well, I will give you an opportunity. We will excuse the jury.

(Jury and alternate jurors admonished and excused at 10:30 a.m.)

## RE: HYPOTHETICAL QUESTION

(Feb. 5, 1952—Notebook 339—pp 83-88.)

Mr. Campbell: It may save time, your Honor—I have no doubt that each of the figures that Mr. Avakian referred to were drawn from one or another document put in evidence in the case, so my

objection is not on that ground. I thought I would save time in making that statement.

Mr. Avakian: In view of Mr. Campbell's agreement, your Honor, that the question is based on the evidence in the record, we have simply the problem of whether it is proper in cross-examination, a witness who has made a net worth computation, to ask him on cross-examination what the net worth would be on the basis of a different set of facts which are covered by the evidence. In other words, the cross-examination simply calls for a computation before the jury of the results of a net worth computation based on other facts in the evidence, aside from those in the particular set which the witness selected.

Now we have the basic proposition, your Honor, that in cross-examining one who takes the stand as a skilled witness, the cross-examination may include hypothetical questions put to him on the basis of any set of facts covered by the evidence which the jury may reasonably conclude are the true and correct set of facts. That rule, which we stated earlier to your Honor, is found in Wigmore 3rd Edition, Volume 2, Sections 684 and 682 read together.

In addition, your Honor, in income tax cases it has been held that where a witness testifies to a computation of income and of tax due on the net worth basis, a government witness, it is proper to challenge his computation on cross-examination by showing what the results would be if he based his computations on another set of facts that the evi-

dence covers. I might say to your Honor that is a customary practice followed by trial courts in cases with which I have been familiar throughout the country in tax cases.

The Court: I agree with you. Now you have in mind perhaps cases where a medical expert has given an opinion. I think that would be an illustration of your idea. Certain symptoms, and so on, are presented in a hypothetical question and the doctor gives an opinion. On cross-examination there may be evidence in the record as to other symptoms by some other doctor and the doctor on the stand has disagreed with this other doctor. Then it would be proper to propound a hypothetical question to the doctor under cross-examination, based upon other and different symptoms than his testimony was based on, but this is merely a hypothetical calculation you are using your figures on. For instance, two plus two equals four. Now you are asking the witness, does two plus one equal four.

Mr. Avakian: No, your Honor, that is not my point at all. Mr. Brady has done more than simply add up two plus two. He has also selected the particular items that he is going to include in his addition, and to use a specific illustration, he has assumed that——

The Court (Interceding): After all, I don't see where there is much to argue about. I think I will permit the question.

Mr. Avakian: Thank you, your Honor.

The Court: It is a matter of one of us taking a certain set of figures and arriving at a certain

result and then the same witness presented with a different set. The question is, will he come to the same or a different result.

Mr. Avakian: That is right, to illustrate a different result from a different description of the facts.

Mr. Campbell: May I point this out to your Honor as the vice of this particular question, without quarreling with your Honor's ruling in any way. An effort is made, based upon certain theories of the defense, as to the partnerships, to show the results only as they would exist for one year. Now if the same adjustments were made as to all the years, an entirely different picture would be presented, but here he is only applying his theory to one year. The question is so involved and he specifies so many figures that the witness should not be expected to come up with a computation in a couple of minutes with the use of pencil and paper on the stand. He should have an opportunity to put down these figures and make proper computation in that regard.

The Court: If the witness wants time——

Mr. Campbell: But if counsel states, in making those adjustments which he proposes in his question, it comes out to a certain result, as I say, I will not challenge his result. If he wants the witness to compute it, he should have an opportunity to do so.

Mr. Avakian: I used the adding machine.

The Court: I am in no position or inclined to reject the question, whether or not it should be answered, on condition he might ask one or two



other questions. I can't do that. As to these other years, that is a matter for counsel to decide whether he wants to present a different computation of other years. That is his province, not the Court's, so I am going to permit the question and if the witness needs time to make the computation he may have time. Call in the jury.

Mr. Campbell: Pardon me, may I make one further objection with respect to the contents of the question, and that is as to the Robert Jeffress note, which is assumed to be a liability at the end of 1946. I submit there is no evidence in the record to support that assertion. As to the others, I have no doubt there can be found some basis for counsel's contention.

Mr. Avakian: Would your Honor like to hear me on that point?

The Court: Yes, on that point I would like to have some argument.

Mr. Avakian: I think there is even more basis for inferring the existence of that loan at the end of 1946, than there is for inferring the existence at the end of 1946, of the 65 thousand dollar asset which your Honor permitted to be included in Exhibit 183. You recall that the 65 thousand dollar asset was simply a check payable to Kyne. Remember in November of 1946, Mr. Kyne said he cashed the check, put the money in Box 48—

Mr. Campbell: Got thousand dollar bills and personally turned over to Mr. Remmer at 50 Mason Street.

Mr. Avakian: We have then money in Mr. Rem-



mer's possession early in November in 1946, and no evidence it was in his possession on December 31st. Now your Honor ruled in substance that it would be a permissive inference for the jury to assume that that money, which was last identified early in November as being in Mr. Remmer's hands, was still in his hands at the end of 1946. Now if that is a permissive inference, your Honor, then we submit it is likewise a permissive inference, even more so, that a loan, evidenced by a note on September 27, 1946, was still in existence at the end of 1946, particularly in view of the two things: One is the fact that there was a payment in July, 1947, of some 23 thousand dollars, which permits the inference the loan had not yet been repaid prior to that time, and secondly, your Honor, there is the rule that in a criminal case the just must resolve all reasonable doubts in favor of the defendant, so that the jury, in drawing inferences as to whether that loan was in existence at the end of 1946, must resolve all doubts in favor of the defendant, and in view of that rule, it would be proper for them to infer and conclude that that loan was still in existence at the end of 1946, so that we have here, your Honor, a situation which is in a sense comparable to the 65 thousand dollar item which your Honor permitted the prosecution to include on the permissive inference basis and in view of the rule of doubts being resolved in favor of the defendant, we think we are in stronger position to support our contention.

The Court: The jury may or may not infer that

that loan was still outstanding at the end of 1946.

Mr. Avakian: I think that is right, your Honor.

The Court: I will permit that to be included in the questions. We will call in the jury.

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10:50 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. BRADY

resumes the witness stand on further [2541]

Cross-Examination

By Mr. Avakian:

Mr. Avakian: I understand your Honor has ruled the witness may answer the question.

The Court: Yes, the witness may answer the question.

Mr. Avakian: I wonder if we may have the question read, so the answer will be intelligent.

(Question read.)

Q. Have you made that computation, Mr. Brady? A. Yes, I did.

Q. What was the adjusted net worth figure resulting from the assumptions made on that question?

Mr. Campbell: I object to the question in that form—adjusted net worth. He can state the figure.

Q. What was the figure that resulted for the end of 1946, from making those adjustments?

(Testimony of A. V. Brady.)

A. Assuming the figures you gave me, and the balances, the net worth would be \$135,325.82.

Q. Now, Mr. Brady, in order to properly compute the net income by the net worth method for each of the years, 1944, 1945, and 1946, the making of the adjustments which I assumed in my question for the year 1946, would call for making of comparable type adjustment for each of the other years, in order to reach a consistent conclusion on net worth increase income?

Mr. Campbell: That is assuming that the adjustments were correct in your question. [2542]

Mr. Avakian: Yes, are comparable type of adjustments as called for.

A. Any adjustment that we would make to the previous net worth would affect the increase, yes.

Q. Now isn't it true, Mr. Brady, that if during each of the years involved in this indictment you had given effect to the partnerships in the B. & R. Smoke Shoppe, the Day-Night Cigar Store, 110 Eddy Street, Menlo Club, and Transit Smoke Shop, and if you eliminated the cash on hand at the end of 1946, of 65 thousand dollars, and if you included in the liability at the end of 1946, a 50 thousand dollar obligation to Robert L. Jeffers, the amount of income computed on the net worth method, on the basis of giving effect to those factors, would be approximately the same for the three-year period as a whole as Mr. Remmer reported in his income tax returns?

Mr. Campbell: That is objected to as calling for

(Testimony of A. V. Brady.)

certain legal conclusions of this witness. That is a general statement giving effect to partnerships which calls for interpretation on the part of this witness, particularly in relation to the Menlo Club, as to the meaning of the agreement entered into in July of 1946.

Mr. Avakian: Your Honor, I am only asking him to assume for that question the matters which are testified to by every witness the prosecution has called, namely, that they were partnerships and that partnership income was reported by the [2543] different partners on a proportionate percentage basis and tax paid on that basis.

The Court: You may answer the question.

A. Before answering that question, I believe it would only be fair to make a computation of this.

Q. Have you ever made such a computation, Mr. Brady? A. No, I have not.

Q. That would be a lengthy job, would it not?

A. Well, I wouldn't want to do it right off-hand here, because I want to be correct.

Q. During the period that you have been assigned to this case, since you were first assigned to it in 1950, you have never made such a computation?

A. Never made the computation that you mentioned, no.

Q. By that do you mean, Mr. Brady, that you have, during that period, made computations for these three years different in any respect from computations shown in Exhibit 183?

(Testimony of A. V. Brady.)

Mr. Campbell: Objected to as not proper cross-examination.

The Court: Objection sustained.

Mr. Avakian: I can cite you some authority on that, your Honor.

The Court: Well, the objection is sustained.

Mr. Avakian: Do you care to listen to the authority, your Honor? [2544]

The Court: No, proceed.

Q. Now, Mr. Brady, in Exhibit 183 for the year 1945, you have computed an understatement of income at the very bottom line of the exhibit, which you have designated as difference in amount, of \$11,747.04, isn't that correct?

A. That is the amount that year, yes.

Q. Now, Mr. Brady, if we left Exhibit 183 exactly as it is, except for this one change of counting in the B. & R. Smoke Shoppe bank roll only 5 thousand in cash and excluding the 15 thousand in accounts receivable, there would be no understatement of income then on Exhibit 183 for that year, 1945, isn't that correct?

Mr. Campbell: Objected to as calling for his conclusion as to whether or not there would be an understatement of income. I think the witness can be asked to make the computation, but to draw his conclusions is not proper.

The Court: Yes, objection is sustained.

Q. Very well. Mr. Brady, take Exhibit 183 exactly as you have prepared it, with this one change, for the year 1945 eliminate from the B. & R. Smoke

(Testimony of A. V. Brady.)

Shoppe bank roll the 15 thousand dollars in markers. What would be the total income computation for the year 1945 with that adjustment?

Mr. Campbell: Just a minute—I also object to the question on the same grounds, that it is calling for a conclusion. I will stipulate with counsel if you eliminate [2545] \$11,747.04, or any amount in excess of that, from that column of figures there would be nothing.

Mr. Avakian: Your Honor, the importance of the question is, in the B. & R. bank roll the testimony is there was five thousand cash and 15 thousand accounts receivable. Now Mr. Weaver has testified he used those two together in the 20 thousand bank roll figure, although the evidence——

The Court: Answer the question.

A. I think before we answer that, I think we have to take into account the same factors for the previous years. In other words, if there were accounts receivable in 1944 and accounts receivable in 1945 eliminated, both of those, why I do not think we could come up with that same picture.

Q. You know, do you not, Mr. Brady, that the first time any testimony relating to accounts receivable, as distinguished from cash, in the B. & R. Smoke Shoppe bank roll is Mr. Pritchett's testimony as of the end of 1945?

Mr. Campbell: Objected to as argumentative.

Mr. Avakian: That is evidence, your Honor.

Mr. Campbell: And counsel's statement of the evidence.

(Testimony of A. V. Brady.)

The Court: Objection sustained.

Q. Now with respect to the item in Exhibit 183 shown as to Gene Schriber, which is the last liability item that appears for the first time in Exhibit 183 at the end of the year 1945, does it not? [2546]

A. That is correct.

Q. And you have taken the figure of 100 thousand dollars from Exhibit 140, have you not?

A. Yes.

Q. If, in lieu of the 100 thousand dollar liability figure shown on Exhibit 140 you had used the figure of 125 thousand dollars shown on Exhibit 125C, is it not true, Mr. Brady, that the amount of income computed for the year 1945 on Exhibit 183 would then be less than the amount reported by Mr. Remmer.

A. Yes, that is correct.

Q. That one adjustment alone would completely eliminate any understatement of income for that year?

Mr. Campbell: Just a minute—that calls for his conclusion.

The Court: That may go out.

Q. Now, Mr. Brady, you made the statement that the books and records of some of these enterprises were not entirely complete. In the course of your investigation and examination in this case since you were first assigned to it, have you examined books and records or other papers of any of the enterprises listed on Exhibit 183, other than the books, records and papers which have been presented here in court during this trial?

(Testimony of A. V. Brady.)

Mr. Campbell: I am going to object. I recall no testimony by which this witness characterized any of the books [2547] and records in the case. His sole testimony has been, aside from matters which he picked up, have been figures which——

Mr. Avakian: I can read it here.

The Court: Counsel says he can read it to us. Maybe he can.

Mr. Avakian: From page 2511, in answer to the question:

“And that is true of each of the businesses that are enumerated, isn’t that so, Mr. Brady?”

he said:

“Well, I don’t know. I would like to see the other exhibits because I believe some of these books did not show all the assets, so it would be pretty hard to get a correct net worth from the books.”

Now, your Honor, other witnesses have said that the books and records are inaccurate, so we would like to find out what they are, we would like to find out how inaccurate these books are.

The Court: Objection sustained.

Mr. Avakian: We would like to make an offer of proof, your Honor.

The Court: Yes, do you want to send the jury out now?

Mr. Avakian: Could we send them out a few minutes early of the noon recess, send them out at that time, your Honor?

The Court: All right.



(Testimony of A. V. Brady.)

Mr. Avakian: Your Honor, except for that one point, that [2548] would conclude my cross-examination of Mr. Brady, so unless your Honor would permit me to go into it, I would be through with him.

The Court: We will excuse the jury for about 10 minutes.

(Jury and alternate juror admonished and excused at 11:10 a.m.)

(In the absence of the jury.)

**RE: QUESTION TO BRADY**

(Feb. 5, 1952—Notebook 339, pp. 93-99.)

The Court: I would like to have the question read.

Q. (Read): Now, Mr. Brady, you made the statement that the books and records of some of these enterprises were not entirely complete. In the course of your investigation and examination in this case, since you were first assigned to it, have you examined books and records or other papers of any of the enterprises listed on Exhibit 183, other than the books, records and papers which have been presented here in court during this trial?

The Court: What is your objection to that question, Mr. Campbell?

Mr. Campbell: It is this, your Honor. At the cross-examination of Mr. Brady yesterday his attention was called on Exhibit 163, a chart, he said he took the net worth figures of 110 Eddy Street

(Testimony of A. V. Brady.)

from and put them on this chart. His attention was directed to, in the lower portion of Exhibit 163, the statement: "Capital accounts per books," and he was asked this question: "Now in preparing Exhibit 183 \* \* \* 'which is the chart,' \* \* \* you did not take the amount of Mr. Remmer's capital account shown on the lower portion of that exhibit, but rather took the figure shown as total net worth of the entire business, did you not?"

"A. Yes, we took the net worth as shown on the business for Mr. Remmer.

"Q. And that is true of each of this businesses that I enumerated a few moments ago, isn't that true, Mr. Brady?"

"A. Well, I don't know, I would like to see the other exhibits because I believe some of these books did not show all the assets, so it would be pretty hard to get a correct net worth from the books."

Now my point is this—that this is not a matter of the adequacy or inadequacy of the books which was gone into on direct examination of this witness. He testified as to the source of these figures and instructions he received to put them in here. Now we have come in through other witnesses in detail whether the books contained all the assets or did not. It seems to me that here where after that matter has been covered by witnesses and is not within the scope of the direct examination of this witness, that we should not take the time to again go through these matters, if my objection is valid, and I am sure it is valid, and I make it upon the grounds it is not within the scope of direct examination.

The Court: Here is the thought that occurs to me now. He made a statement here that he made computations based upon certain exhibits in the record and he produced a computation.

Mr. Campbell: Yes, your Honor.

The Court: It would seem to me perfectly proper for counsel to inquire if he had used any other material than the material inquired about on direct examination.

Mr. Campbell: That is not the question.

The Court: That is what I understand to be the question. Let us have the question read.

(Question read.)

The Court: I think if we eliminated that introductory part of that question, it might obviate your objection.

Mr. Avakian: My question is broader than that. May I have a moment to state my position on it.

The Court: What is your question? How does it extend any farther than what was just read?

Mr. Avakian: It does not extend farther than it was read, but it does extend farther than it would if that first part were eliminated. In other words, I do not want to leave the question in the manner you have stated because what I want to get at is this—the witness has testified that the books and records were inadequate. Now it is a rule of law that the net worth method can be used only, your Honor, if the books and records maintained by the taxpayer are inadequate and insufficient to prepare computation of income on the book method and if

the net worth method on the basis of all the available evidence is a better accounting method than the book method. Now that, we anticipate, will be an instruction which your Honor will give to the jury. Now the jury would have to decide, your Honor, as a preliminary matter, whether they are going to use the net worth method or the book method. In deciding that, they are going to have to know whether books and records maintained by these businesses were adequate and sufficient to permit computation of income on the book method and they can not determine that, your Honor, unless they know what was in existence. Now we have heard Mr. Brady, Mr. Weaver and other prosecution witnesses make the statement that the books and records are inadequate, but your Honor, we want to show that that charge is not being made in good faith because they have on the third floor of this building books and records of these businesses which they are not producing in court, they are not allowing the jury to see what was being maintained to let the jury decide what was adequate. They sit here and make statements and won't produce books and allow us to see them. It isn't fair to the defense to let these witnesses, who know they have these books and records upstairs, cartons of them, who know that, to get up here and say the books and records are inadequate but you can't look at all the books and records that are here, you have to take my word for it.

Now we want to show that the books and records and other papers maintained by these witnesses are insufficient from an accounting point of view, we

want the jury to decide whether they are insufficient or not; we want these witnesses, when they say the records are inadequate, to produce records kept by these businesses, maintained by these businesses, in the course of business. Let us produce them in court. Why all this mystery? Why statements the books are inadequate and yet refusal to bring them in? It is a matter of fairness to any defendant to let the jury decide directly from the facts, rather than conclusions and opinions of a witness.

The Court: You said you wanted the jury sent out to make an offer of proof. This is an argument on whether or not this question should be permitted. What is your offer of proof?

Mr. Avakian: My offer of proof, your Honor, is to show that the prosecution has in its possession the books and records and other papers maintained by these various businesses shown on Exhibit 183 in the regular course of business in regard to the years 1944, 1945 and 1946, which books, records and papers are in the possession of the prosecution in this building and have not been produced in the court room.

We offer to prove further that the statement of the witness, Mr. Brady, and others, that the books, records and papers maintained by these businesses were inadequate and insufficient is not true and is not correct because there are these additional papers which have not been produced. We offer to show that the statements of the prosecution's witnesses, to the effect that the books, records and papers are inadequate, are not made in good faith. That is the purpose of our offer.

The Court: That is a proper matter for your case in chief.

Mr. Avakian: One thing more, your Honor. And as a part of that offer of proof, your Honor, we want to show that the production of all those papers, books and records now in the possession of the prosecution would show the adequacy of the business records and accounting methods maintained by these different businesses.

The Court: That is proper on your own case.

Mr. Avakian: These are government witnesses, your Honor. It is only through government witnesses we can show that.

The Court: All right, they are government witnesses.

Mr. Avakian: They testified in their examination and all we are doing is challenging on their testimony.

The Court: Let me have this question again. I am not going to permit this offer of proof on cross-examination of this witness, but I do not mean by that I would not permit you to make such proof in your case. Let us have the question.

(Question read.)

The Court: Whether it is testified as to whether the books are inadequate or not, it seems to me would be immaterial. You may ask the part of that question that has to do with whether or not he examined any other books or records than the exhibits in evidence.

Mr. Campbell: I think the question also should

be directed to examining them in connection with the preparation.

The Court: In connection with Exhibit 183.

Mr. Avakian: That is not the point I am interested. The offer of proof is what I am interested in.

The Court: I will not deny your offer of proof, but it is not proper at this stage of the examination.

Mr. Avakian: You are denying it so far as this witness is concerned?

The Court: Denying it on the government's case.

Mr. Avakian: In view of that ruling, may we move to strike the testimony of Mr. Brady, page 1125 of the transcript, reading as follows: "Well, I don't know. I would like to see the other exhibits because I believe some of these books did not show all the assets, so it would be pretty hard to get a correct net worth from the books."

The Court: Motion denied. So bring in the jury.

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11:25

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. BRADY

resumes the witness stand on further

Cross-Examination

By Mr. Avakian:

The Court: Counsel may inquire of the witness whether, in preparing or formulating Exhibit 183, he had recourse to any other than the records and exhibits in evidence in this case.

(Testimony of A. V. Brady.)

Mr. Avakian: I understand the ruling on sustaining objection to the question I asked stands.

The Court: No, it does not stand. It is modified to the extent just mentioned.

Mr. Avakian: But as the question was asked, the objection stands sustained?

The Court: Read my question.

(Court's statement read.) [2549]

The Court: You may propound that question.

Mr. Avakian: That wasn't the question I was interested in.

The Court: Then you don't have to propound it.

Mr. Avakian: Then, your Honor, in view of your Honor's ruling on the question and in view of your Honor's ruling on the offer of proof, we have no further cross-examination.

The Court: Very well.

Mr. Campbell: No redirect.

The Court: You may be excused.

Mr. Thompson: Your Honor, I would like to make a statement for the record. Certain witnesses have been subpoenaed and have not appeared to testify.

Mr. Golden: Of course, we don't know what Mr. Thompson is going to say, your Honor, but if he is not going to take the stand, I don't think we ought to take statements now.

Mr. Thompson: I intend to refer to part of the clerk's file in the case. If I make any statement prejudicial to the defendant, I have no doubt—

Mr. Golden: If there is any chance—and I be-



lieve from what Mr. Thompson says there will be a chance——

The Court: Suppose you have a conference and find out what it is, and if there is any objection, approach the bench and we will see what the situation is.

(Conference between counsel outside of hearing of jury.) [2550]

Mr. Thompson: We would like to take this matter up with the Court, your Honor, in the absence of the jury.

The Court: Very well, the jury will be excused.

Mr. Golden: Just as a practical matter, I understand from Mr. Thompson, after we have disposed of this matter, the prosecution intends to rest. If that is the case, there are certain legal matters we have to take up with the Court, which will take some time and only because of the present hour and as a practical matter, it might be practical to dispose of this matter and then excuse the jury for the balance of the day, if your Honor sees fit to do so, because we have certain matters which will take a little time.

The Court: I do not feel like excusing the jury for the balance of the day. I will excuse them until two o'clock.

Mr. Thompson: There are other criminal matters set for today.

The Court: From one to two.

Mr. Golden: Would your Honor like me to tell you privately what I have in mind?

The Court: Yes.

(Conference at the bench between Court and counsel.)

The Court: We will excuse the jury just for a short time now.

(Jury and alternate jurors admonished and excused at [2551] 11:30 a.m.)

(In the absence of the jury.)

(Defendant present with counsel.)

Mr. Golden: If the Court please, perhaps if I say something first it might shorten the matter. I understand from Mr. Thompson that the statement he wished to make, without going into the detail of it, was to cover this subject matter, that a subpoena was served on Albert Villaudy at a particular date, and there are some letters here from doctors indicating his health would prevent him coming, and, secondly, a subpoena was served on William E. Fricker, and there was an affidavit from his wife and a doctor's certificate apparently that he was unable to be here; and third, that a subpoena was served on Masse Ditto and for medical reasons he also is unable to be here, and fourth, that some time last month that a subpoena was issued for a man by the name of Oscar Nelson and they were not able to serve the subpoena.

Mr. Thompson: As to Oscar Nelson, subpoenas were issued throughout the months of November and December, and finally a warrant was issued for him.

Mr. Golden: Anyway our point is this—we agree it is proper in a case to put on a witness, a sheriff

of Washoe County or a police officer, whoever it may be, to testify as to his efforts to locate a witness who has not been produced in court and, of course, then the defense is entitled to [2552] cross-examine that public official as to his efforts and extent of them, and so on.

Now we would have no objection to stipulating that the first three persons I named had subpoenas served on them and for medical reasons did not appear here, that the checks of Mr. Villaudy were admitted in evidence by stipulation. As to the witness Nelson, in view of the hullabaloo which appeared in the press, which may or may not have come to the attention of some people on the jury, we are apprehensive that any statement made by Mr. Thompson, even though not so intended may be prejudicial to the defendant. We would be willing to stipulate that a subpoena was issued to Mr. Nelson and not served, but if it is going farther than that, we would want the man who says he couldn't find him to become a witness so we could cross-examine him.

The Court: Why wouldn't that be sufficient?

Mr. Thompson: That is satisfactory.

The Court: So now we understand that counsel will stipulate that the first three witnesses named, due to illness, can not be produced here, is that correct?

Mr. Golden: Yes, your Honor.

The Court: And as to the witness Nelson, the subpoena was issued and the witness was not found by the officer, is that satisfactory?

Mr. Thompson: That is satisfactory. [2553]

The Court: That is the whole situation. Now we will call the jury back.

Mr. Golden: I think the stipulation should include that two checks of one of those persons were admitted by stipulation.

The Court: That is up to Mr. Thompson, if he wants to accept that.

11:35 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

The Court: Mr. Thompson?

Mr. Thompson: Your Honor, I understand it has been stipulated that subpoenas were served on the following witnesses: Albert Villaudy, William E. Fricker, and Masse Ditto, to appear to testify at this trial; that each of those three persons is unable to attend for medical reasons. It has also been stipulated that subpoena has been issued for Oscar E. Nelson and the officer was unable to serve the subpoena, that he could not find Mr. Nelson, and in connection with Albert Villaudy, Mr. Golden has requested me to mention that two checks were admitted in evidence by stipulation of the defense which had been received from Mr. Villaudy.

Mr. Golden: That is correct, your Honor, we so stipulate.

Mr. Thompson: We rest, your Honor.

(Jury and alternate jurors admonished and excused until tomorrow morning at 10:00 [2554] o'clock.)

(In the absence of the jury.)

RE: MOTION TO STRIKE—MOTION FOR  
ACQUITTAL

(Febr. 5, 1952—Notebook 340—pp. 4-34.)

Mr. Avakian: Your Honor, we desire at this time to make a number of motions to strike, with respect to testimony and exhibits which we feel have not been properly connected up or not properly in evidence. They will relate to approximately a dozen matters and then after that we desire to make——

The Court: I do not believe we have encountered that procedure before. It seems to me after testimony is given and after objection it was admitted in evidence—the evidence was not admitted subject to any motions to strike.

Mr. Avakian: There were a number of matters in which, in overruling our objections, your Honor stated if the matter was not connected we could make motions to strike. There are a number of them in that category.

The Court: We will see what they are.

Mr. Avakian: In most instances that are unrelated to each other and I do not know whether your Honor would like to have me run through them or rule one at a time.

The Court: We had better take one at a time.

Mr. Avakian: Very well. First of all, with respect to Exhibits 17, 18 and 19, which are insurance policies introduced by the witness Scollin, and the related testimony of Mr. Scollin, begins at page 49 of the transcript and continues for a number of pages. I call your Honor's attention to the fact that the prosecution did not use any of this evidence in totalling Exhibit 183, the over-all statement of net worth. There is no showing in the evidence that the insurance payments were non-deductible expenditures and the prosecution did not attempt to use them in that way in 183. There is no showing as to the cost of the articles which are mentioned in the insurance policies and statement in the policies of the insured value would be misleading, in the event the jury should take the exhibits in the jury room; and likewise no showing as to the date of acquisition which would be essential in order for them to enter into computation of net worth. That is the motion in respect to those factors, your Honor.

The Court: I will hear counsel in opposition.

Mr. Thompson: In that connection the government is entitled to argue that the standard of living maintained by this defendant, in connection with his personal expenditures in chart, Exhibit 183, have not been computed at any definite figure, but which the jury is entitled to take into consideration in determining whether or not this defendant did report his true income, as computed on the net worth basis. These insurance policies are connected with the actual personal expenditures proved to have

been paid by the defendant during the years in question, in that he paid the premiums on the policies and the policies themselves further show that they covered personal property, floater insurance on articles as mink coats, valuable items of jewelry, and matters of that sort. It appears to us that they are very relevant and material in a case of this character and that, although the government has not attempted to fix the defendant's non-deductible personal expenses at a certain figure each year, still the jury is entitled to take into consideration, in deciding this case, the standard of living maintained by the defendant.

Mr. Avakian: Your Honor, I think the answer to Mr. Thompson's argument is there is no showing that any of these articles were acquired during the years 1944, 1945 and 1946. Unless they were acquired during those years, they would have no bearing. The burden being on the prosecution to establish the guilt of the defendant, it would not be proper to leave room for speculation as to when they were acquired, and in fact I think the testimony of the witness was that these were renewal policies, indicating that some items, at least some of them, were insured prior to 1944.

The Court: The motion to strike Exhibits 17, 18 and 19 is denied.

Mr. Avakian: The next, your Honor, relates to the testimony and also to Exhibit 42, which is Mrs. Badovinat's testimony. Your Honor will recall that Mr. Badovinat testified in February of 1947, which is after the indictment period, her husband,

now deceased, told her he was going down to the bank to buy a cashier's check for five thousand dollars to send to Mr. Remmer to repay a loan. At the time that conversation was admitted into evidence, the prosecution stated that they expected to connect that up. Subsequently, through the Bank of America's representative, Exhibit 42 was introduced and that is cashier's check for five thousand dollars, issued in February of 1947, payable to Mr. Remmer and at that time, in connection with our objection, the prosecution stated that they expected to connect that matter up by relating it to some transaction that occurred during the indictment period and your Honor stated at that time, page 172 of the transcript, that you might reconsider a motion to strike in the event it were not connected. Now the only questions that were asked of any witnesses thereafter regarding that loan was inquiry of Mr. Kyne, pages 1024 and 1025 of the transcript, as to whether he knew anything about such a loan and he said he had no knowledge regarding it, so that as the record now stands there has been no showing whatsoever as to the date at which that money was loaned to Mr. Badovintz, and of course it would be immaterial if the money were loaned after 1946. It would likewise be immaterial if the money were loaned prior to 1944. In other words, this could be material only if the loan were made during 1944, 1945 or 1946, and there is nothing in the evidence from which any inference could be drawn as to the date on which the loan was made, and I call again to your Honor's attention the fact that in Ex-



hibit 183, the prosecution regarding the Badovinatze loan has just entered a loan for each of the years, indicating that they have not attempted to use that loan in making their computations in Exhibit 183 and we feel it has not been connected up and for that reason ask your Honor to reconsider the matter and to grant our motion to strike.

Mr. Thompson: With reference to that loan, your Honor, I believe that Mr. Avakian's recitation of the testimony in evidence is substantially correct. Your Honor will note that the loan was repaid February 7, 1947. It would have to have been made within a period of 38 days prior to the repayment for the date not to be material in this case. That is, if the loan was made in the year 1946, 1945 or 1944, it would be material, also if it was made prior to December 31, 1943, it would be material in setting the starting net worth of the defendant. As I understand a case of this character, the government makes a thorough investigation and lists at the starting point all of the assets of the defendant which its investigation discloses the defendant owned at that time. Now the only question of materiality relates to whether or not it can reasonably be inferred that this loan was made prior to December 31, 1946. Now your Honor has noted from Exhibit 183 that the government has not attempted to include that loan as an amount in net worth computation. Nevertheless, we believe it can well be argued from the testimony of Willie Kyne, who testified, as I recall it, that Mr. Badovinatze had an interest in Calvada Lodge, which is adjacent to

Cal-Neva Lodge at Lake Tahoe, that the opportunity of Mr. Remmer, who managed Cal-Neva Lodge, to see Mr. Badovinatz would have occurred during the season of 1946, or at least during one of the summer seasons when those places are open, they being closed normally after Labor Day of each year. It is not an especially important item in this case, your Honor, but we think the evidence is present from which a reference can reasonably be drawn that the loan was made prior to December 31, 1946.

Mr. Avakian: Now, your Honor, I do not know of any evidence in the record, other than at page 1024, from Mr. Kyne regarding Mr. Badovinatz, and that is simply that he was acquainted with him, his first name was Arley, I believe; he lived most of the time in Stockton or Fresno (reads from page 1024 of transcript). That is all the testimony I have been able to find.

The Court: My recollection is there was some testimony about his being up at the Lake.

Mr. Avakian: There was testimony of Mrs. Badovinatz, I believe, that her husband had an interest in Calvada Lodge, not Cal-Neva, with which this defendant has no connection. Your Honor, we do not think the jury could properly infer, in a case in which they are required to resolve all reasonable doubts in favor of the defendant, any proper inference could be drawn by the jury that the loan repaid on February 7th was negotiated during the years covered by the indictment. There is no proper basis on which any inference can be drawn as to the time.

Mr. Thompson: I would like to make one further suggestion, your Honor. I think the evidence in the record is material to show the scope and thoroughness of the investigation conducted by the government agents and the effort made to cover every possible item of asset or liability during the period in question, and in view of the treatment that the government has accorded this particular subject, that is, that it has not been included in the net worth statements, it seems to me that the evidence in the record is material on the basis that I mentioned.

Mr. Avakian: We disagree with that. They are assuming matters here. If your Honor wishes, I will go into it further, but in view of the time, if your Honor is satisfied you have points from both sides, I am willing to submit the motion.

The Court: Motion denied.

Mr. Avakian: Next, in respect to Exhibit 15 and Exhibit 60, which are Cal-Neva floor stock tax returns. I believe that one return is typical of another, except one has attached to it an inventory of the Gallagher and Burton whiskey which was in storage in Reno. Those, your Honor, are returns of Cal-Neva, Inc., and not of the defendant. There is no showing whatsoever that the defendant paid the tax shown on those returns and no showing whatsoever that whoever did pay the tax paid that on behalf of the defendant, and in the absence of such a showing, I respectfully suggest that the matter has not been properly connected and move it be stricken.

Mr. Thompson: If the Court please, in that connection it has been shown that the whiskey upon which tax was paid belonged to the defendant and that he paid to Mr. Pete Barengo some sixty thousand dollars out in cash for that whiskey. There are no indications on the books of Cal-Neva that the money was paid by Cal-Neva or by Mr. Remmer on behalf of Cal-Neva and credited to his account with that corporation. Inasmuch as the whiskey, upon which the tax was paid, belonged to Mr. Remmer and the floor tax returns show on their face that tax in the amount of some seven thousand odd dollars was paid in cash, that there was no entry in the books of Cal-Neva, indicating that that payment was made by Cal-Neva, Inc., we think it is a fair inference from the evidence that Mr. Remmer paid that money himself. He is the one who signed the return, and it also can be argued that it is conceivable that the reason the return was made in the name of Cal-Neva, Inc., rather than Elmer Remmer was that Mr. Remmer may not have had a wholesale liquor dealer's license at that time, while Cal-Neva may have had such a license.

Mr. Avakian: Well, the evidence does not bear out what Mr. Thompson states. It is all speculative, and the rule is clear that a jury may not draw inferences on the basis of speculation. It must be based on evidence.

The Court: The motion will be denied.

Mr. Avakian: Next, your Honor, is the matter which appears at page 821 to 824 of the transcript, in which Mr. Campbell called a Mr. Lando, asked

him if he knew certain people whom he named, among others Sacramento Sam and Crying Mac. At that time the defense asked that this be stricken. The witness answered he did not know them, and we asked that these questions be stricken, that the answers be stricken, for the reason that it was our belief that the prosecution, in questioning his own witness about this matter, probably knew that he did not know these people and was asking the questions with respect to these particular names for the purpose of providing some ridicule. The Court at this time and counsel engaged in this conversation with the Court: (Reads from page 821 of the transcript.) Now, your Honor, there was no further testimony in the case with respect to these names. As far as we can tell, there has been nothing offered here by the prosecution which shows any significance in the names of Sacramento Sam and Crying Mac. There has been no evidence we can find which connects up that testimony with any material issue in this case and in view of the fact it not having been connected up on the expectations of the prosecution, we believe that the evidence in that connection should be stricken.

The Court: The witness stated he didn't know either one of these men?

Mr. Avakian: That is right.

The Court: It merely resolves itself to straightening out a question and the motion will be denied.

Mr. Avakian: The next, your Honor, Exhibit 58, which is a ledger sheet of Bullock & Jones, together with the related testimony of the witness,

Gillingham, beginning on page 289 of the transcript. That exhibit and testimony related to account of Mr. Remmer with Bullock & Jones, by far the greater portion of which was made up of merchandise orders and no evidence whatsoever, your Honor, that any of the expenditures reflected by that exhibit and testimony were non-deductible expenditures and, of course, if they are deductible they are not material. The burden of proof is on the prosecution and it is the duty of the jury——

The Court (Interceding): I do not see that argument, whether they are deductible or non-deductible. If the defendant had a considerable sum of money to spend for an item, would it make any difference in the over-all whether the money went for deductible or non-deductible.

Mr. Avakian: Yes, because of the unusual method of computing on net worth. The government agents themselves testified on the stand in computing net income what we are concerned with was non-deductible expenditures. Deductible expenditures are ignored and are of no consequence. It is only the non-deductible expenditures. They may be added to the increase in net worth in determining income by the net worth method.

The Court: Wouldn't it be some corroboration to have a chart here or exhibit showing a computation or testimony made from exhibits in the case of certain income at a certain period of time? Wouldn't it be some corroboration to show that he had considerable money to spend at that time?

Mr. Avakian: No, your Honor, because the net

worth method deals not with the flow of money during the year, but rather with the changes in total net worth from the beginning to the end of the year in comparison. Not what happens during the year, your Honor, but rather the amount of change when you compare the end with the beginning of the year. What happens in the interim is immaterial unless it is reflected in some way in the assets on hand at the end. That is the peculiar thing about net worth method of computing income. Once you have computed the difference in the amount of net worth at the end of the year in comparison with the beginning, it is proper to add to that increase the amount of any non-deductible expenditures which the taxpayer has made during the year, but it is not proper to add any deductible expenditures which have been made in computing net income. That, your Honor, is the vice of leaving before the jury evidence of expenditures which have not been shown to be of a non-deductible nature, because the jury may mistakenly add those expenditures to the increased net worth, whereas, the matter is clear that only type of expenditures that may be added to net worth figures is non-deductible type of expenditures and the burden is on the prosecution to show the expenditures that they want the jury to consider are of a non-deductible nature. In other words, your Honor, a federal income tax payment is a non-deductible expenditure and it is proper to add federal income tax during the year to increase the net worth. On the other hand, a business expenditure, such as



travel expenses or promotional expenses, the money spent for developing in some way, in cultivating patrons of business, anything of that kind that you would classify as business expenditure and, therefore, would be deductible, should not be added to the increase of net worth in computing the net income on the net worth method.

Mr. Thompson: I might point out in this connection Mr. Remmer kept no personal records. This is shown to be a personal account of Mr. Remmer with Bullock & Jones and the things which he purchased were merchandise orders. Now technically Mr. Avakian is correct when he states that deductible expenses can not be taken into consideration in computing income on a net worth basis, and conversely that non-deductible expenses, such as living expenses, can be taken into consideration, but such expenses are taken into consideration at any income tax computation only when they are claimed and proved by the taxpayer. Mr. Remmer's personal income tax returns in this case have no indication of claim of a business deduction or business expenditures of merchants orders purchased from Bullock & Jones. Presumably any purchases of that character are personal expenses. The best the government can do is to prove the expenses. We have gone into every record available, as shown by the testimony of the agents, and have identified these matters as best they can be identified. The presumption is, as I say that this is a personal expense. Normally merchants orders are purchased as gifts and generally the only gifts that are de-



ductible under the income tax law are charitable contributions, and we suggest that the only fair inference that can be drawn from the evidence now before the Court is that this account of Mr. Remmer's with Bullock & Jones, a men's furnishing store, was a personal account and that the expenses which he paid in connection with that account were personal rather than business expenses. No taxpayer is entitled to any business deductions unless he claims them and proves them and he has to keep books and records to show them.

Mr. Avakian: I think Mr. Thompson overlooks the fact that in a criminal case the presumption is not against the defendant, but rather in his favor, and there is no proper basis upon which the jury could treat any expenditure as strictly personal. On the contrary, the jury in criminal cases are required, under the established rules, to treat all presumptions in favor of the defendant and to resolve all matters of that kind in his favor, unless they are overcome by evidence which removes all reasonable doubt. Insofar as these things are concerned, I specifically recall the testimony of Mr. Cavani that he used one of these orders to purchase a suit. Mr. Cavani was a business associate of Mr. Remmer's and a most proper inference to be drawn from that is that the merchants order here was given to him in the capacity as a business associate and that would be, or could be, properly a deductible business expenditure and if it could properly be, the jury would be entitled to draw that inference, your Honor.

The Court: The motion is denied.

Mr. Avakian: Next Exhibit 89 and the related testimony at page 299 of the transcript. This is the account with Sulka and I believe your Honor will recall there were purchases of neckties in large quantities. I believe on one occasion 400 neckties were ordered on one date early in December of that particular year and the testimony of Mr. McCaffery was that they did a large business with people who used their neckties to give as presents in their business. The testimony of various witnesses indicates, I believe Maundrell and Lando first and Kyne, and even others, was that the Sulka neckties were given as presents to patrons of these businesses and that they helped pick them out and in some instances they recommended to Mr. Remmer the names of patrons to whom the neckties should be given and I think the manner of ordering the neckties, 400 at a time, and the testimony in the record as to the use made of them, and also the time of the year they were purchased, all, your Honor, tends to treat the purchase of these neckties as a business expenditure. There is no evidence whatsoever to the contrary, so we believe there is no proper basis, except speculation, which is improper, there is no basis upon which the jury could properly question that these should be treated as non-deductible expenditures.

Mr. Thompson: In the first place I would like to take issue with Mr. Avakian as to the testimony. I think that the only persons who testified they received a Sulka tie were Mr. Kyne, Mr. Lando and

Mr. Maundrell. Each one of them is alleged to be a partner of Mr. Remmer's, and perhaps Mr. Cavani also, but he is a partner, too, and you would have to go a long way to hold that a gift to a business partner is a business deduction. I think most of us are in the habit of making Christmas presents to our business partners and members of our firm and I doubt if any one of us claims that as business deductions. In addition, it is my recollection that the ledger account of the Menlo Club shows that the bill for Sulka & Company was paid by the Menlo Club out of Mr. Remmer's personal account, rather than as a business expense of the Menlo Club. Whatever books are available of the 110 Eddy Street and Day-Night Cigar Store, do not indicate any charges on those books of payments to A. Sulka & Company as promotional or advertising expense. The returns of Mr. Remmer do not show any claimed deduction for those items. A person is entitled to make gifts to whoever he pleases and if he does so, he is spending his money as personal expenditures unless it can be clearly shown it was a matter of advertising of some particular business, and I think it is immaterial how many Christmas gifts a man purchases—some people give many gifts and some people few, but nevertheless those gifts are not recognized under income tax matters as deductible business expenses.

Mr. Avakian: I think Mr. Thompson overlooks the testimony of some witnesses that they recommended the names of patrons to receive these ties

and helped pack them, wrap them up or deliver them.

The Court: The motion is denied.

Mr. Avakian: Next Exhibit No. 71 and related testimony on page 469 of the transcript. That is the account of the custom tailors of New York. The only testimony in the record of the use made of the suits purchased there was the testimony of Mr. Maundrell that he received one of those himself, and he being a business associate, partner as Mr. Thompson calls him, of Mr. Remmer's in the Menlo Club, the use of the money for that purpose could properly be classed as an expenditure of ordinary and necessary business nature and would then be deductible, and in view of the rule, the jury would have to resolve doubts in favor of the defendant, there would be no proper basis on which they could do otherwise.

The Court: Motion denied.

Mr. Avakian: Next, your Honor, is the Blackstone Hotel account ledger sheets in Chicago, Exhibits 100 and 100A, together with the related testimony of Mr. Strong, transcript page 699. The sole evidence on record is that Mr. Remmer stayed at that hotel on certain occasions and incurred and paid certain bills in connection with it. There is no showing whatsoever that those expenditures were of a non-deductible nature and so on the basis of the argument in support to other motions, we submit it should be stricken.

The Court: Motion denied.

Mr. Thompson: I might interrupt to point out

in connection with the last item, I do not recall any reservations of a motion to strike in connection with that testimony.

The Court: I do not think so.

Mr. Avakian: Well, I have in the first place the practice to which we have been accustomed to. That is not an answer——

The Court: Well, this is the first time I have ever seen it done this way.

Mr. Avakian: To be frank, this is the first time we have ever heard it should not be done this way. It is just we have been accustomed to different practices, apparently.

The Court: How many more do you have?

Mr. Avakian: I have two more of this expenditure nature and two others as to which I believe there was a reservation, your Honor, for motion to strike.

The Court: All right, let us have them.

Mr. Avakian: The next is Exhibit 101, ledger sheet of Shreve & Company, with related testimony commencing on page 710. Our motion is again based on the fact that there is no evidence in the record to show non-deductible nature.

The Court: What was the article purchased?

Mr. Avakian: There were a number of items, I believe, I believe some repairs to jewelry, there are some wallets, I believe, and I forget the exact total of it.

The Court: Motion denied.

Mr. Avakian: Next is Exhibit 16 of the Stanley Furniture Company, testimony of Mr. Hill. We

move to strike that exhibit and testimony on the same grounds.

The Court: That had to do with some house at El Cerrito?

Mr. Avakian: Partly and partly office furniture.

The Court: Motion denied.

Mr. Avakian: Next, your Honor, is the testimony of Mr. Ezralow, with respect to the charts that were marked for identification as Exhibits 154, A and B. Your Honor will recall when Mr. Ezralow was on the stand, he presented some blue and red colored charts which purported to show a number of related cases, cases related to this one, and over our objection that there were numerous names of individuals and firms mentioned on those charts which had not been shown in this evidence to be in any way connected with Mr. Remmer, your Honor suggested that the charts should be revised, Mr. Campbell related that he would have them revised but that was never done and we feel that the testimony that was given by Mr. Ezralow with respect to those charts, which have never been admitted in evidence and never been revised, should be stricken.

Mr. Thompson: Those charts are not in evidence and can not be used and I do not recall that Mr. Ezralow gave any testimony of the contents of those charts.

The Court: The charts are not in evidence.

Mr. Avakian: My motion goes to his testimony in respect to the matter.

The Court: The names were not disclosed?

Mr. Avakian: The names were not disclosed but

there was testimony preparing the charts with respect to many related cases.

The Court: Motion denied.

Mr. Avakian: Then, your Honor, this final one. A group of exhibits and related testimony relating to the 186 Club, and your Honor will recall that we objected to evidence relating to the 186 Club returns on the ground the 186 Club was a corporation and that unless and until it was shown that Mr. Remmer received income from the 186 Club over and above the amount of salary which he reported in his individual return, testimony regarding that matter would be immaterial. There is in evidence, offered by the prosecution, returns of the 186 Club, which are Exhibits 87, 87A, 88 and 88A. There is a chart prepared by Mr. Mooser, Exhibit 166. There is a letter to Mr. Boland, Exhibit 167; there is the Silverman-Kyne escrow relating to the purchase, Exhibit 43; there is the employment tax returns, Exhibit 131, and then there are various poker sheets which are Exhibits 110 to 110F inclusive. In preparing Exhibit 183, your Honor, the prosecution has not shown any amount as an asset to Mr. Remmer for the 186 Club. There is simply a dash after each year, although the club is listed in the various businesses mentioned. Now, there is no evidence whatsoever, your Honor, that Mr. Remmer had any net worth in the 186 Club. On the contrary, the evidence is the money, the purchase price, was put up by Kopstake and Nealis and was repaid to them. There was no testimony, there is no exhibit, that would indicate that Mr. Remmer had any invest-



ment at any time in the 186 Club and the prosecution has not attempted to set forth any investment of Mr. Remmer in the 186 Club in preparing their summary, Exhibit 183, and so we move your Honor to strike all those exhibits, together with the related testimony of the witnesses Kyne, Maundrell, Caselini, Busterna, Mooser, Ezralow, Lando and Silverman, on the ground that those exhibits and that testimony have not been connected with any issue in this case.

Mr. Thompson: With relation to the 186 Club, your Honor, this is not included in Exhibit 183 net worth statement because there is no evidence in the case that that asset cost Mr. Remmer anything, and inasmuch as it is, and has been, recognized as a corporation for income tax purposes, well it would be immaterial throughout the three-year period what figure you would put it in at; it would be the same figure right through the three years. However, that evidence relating to the 186 Club is very relevant and material in the case to prove a source of income to Mr. Remmer. Although the reports of income were made as a corporation, it is very apparent that it is a very peculiar type of corporation. There was no stock; it was incorporated as a social club, a non-profit corporation under California law. The actual beneficial owners of the club after the first year, as disclosed by the evidence, were Mr. Remmer, Mr. Kyne, Mr. Busterna, and Mr. Lando. Mr. Lando and Mr. Kyne testified that they did not get anything out of the club. Mr. Busterna testified he got his salary each year and a bonus, that is, he



got a bonus each year and \$25 a day salary and in addition to that there was another partner, Mr. Casselini, who also did not get anything out of it. Mr. Busterna testified the club made money every year while he was acting manager, from 1944, 1945 and 1946. The club kept no books. There is no indication of what happened to the money that was made, other than testimony to the effect that each day a representative of Mr. Remmer's, either Mr. Kyne or Mr. Busterna or Mr. Lando, would go to the club in the morning and pick up the receipts and take them to the office of 50 Mason Street.

The Court: The motion will be denied.

Mr. Avakian: Now, your Honor, that completes the motions to strike and at this time I would like to make a motion for acquittal, based on the grounds that the prosecution's evidence does not make a prima facie case which would warrant submission of the case to the jury.

The Court: That motion will be denied.

Mr. Avakian: Would your Honor care to be heard? There are some cases we think are squarely in point on the facts in this case, dealing with the defect——

The Court: What is the law?

Mr. Avakian: I will refer specifically to two cases which I would like to discuss in connection with the motion. One is the case of Bryan vs. United States, which was decided by the 5th Circuit Court of Appeals in 1949, 175 Fed. (2), 223, and the other case which we believe is right on the point is United States vs. Fenwick, decided by the 7th Cir-

cuit Court of Appeals in 1949, 177 Fed. (2), 488.

The Court: What is the point in the Bryan case?

Mr. Avakian: The point in the Bryan case is specifically this, that government agents admitted that at the starting point of the indictment period—it was a net worth case—they admitted that their computations did not include all of the cash that might have been in existence, but they said they simply included the assets as to which they determined the value. Now, your Honor, the case—

The Court (Interceding): Is that the point you made here because they couldn't show the amount of money in the safe or safety deposit boxes?

Mr. Avakian: On that particular point, that is it exactly.

The Court: That would be putting a premium on proving your money?

Mr. Avakian: No, your Honor, there is no obligation under the law for anybody to refrain from using a safety deposit box, nor is there any obligation under the law to keep any record for future use as to what you have in safety boxes.

The Court: If that is the point, I am not going to entertain it. What other point?

Mr. Avakian: That is one. This is case on appeal and conviction was reversed with the statement motions should be measured—

The Court (Interceding): I am not going to entertain that one.

Mr. Avakian: Your Honor, that is supported by

the general rule applied to the 9th circuit also. If your Honor does not care to hear argument further——

The Court (Interceding): On that point, no.

Mr. Avakian: Well, your Honor, our presentation would be necessarily more than that but specifically that would be the most important item, I believe. As a procedure matter, I might say the appellate courts have indicated to some extent in connection with motions for acquittal that in respect to any error that might have occurred in ruling on motion for acquittal, that the basis of the motion should be made to the trial court, so the trial court could exercise its judgment on it and in order that we might not be prejudiced in that respect, in the event the question should ever arise, your Honor, we would like either the opportunity for full presentation of our position, or we would like to have your Honor rule that, although we have made that request, you do not wish to take the time to entertain it; either way, so we won't be prejudiced.

The Court: I can not see how a Court could reverse a case of this kind because investigators could not determine what was kept in a safe deposit box or a safe.

Mr. Avakian: Would you like to have me read to you where they hold motions of acquittal should be granted?

The Court: If it is on that ground, I would be glad to hear it.

Mr. Avakian: Yes, your Honor, that is what I

have been trying to show, it is on that ground, and in order to show, let me give you the facts.

The Court: Let me inquire if the Bryan and Fenwick cases are the law of this circuit?

Mr. Avakian: Absolutely, because really these cases are simply a particularization of this type of computing income on the net worth method on the general proposition that in a circumstantial evidence case, the case should not be submitted to the jury unless the evidence excludes every reasonable hypothesis of innocence. The Circuit Court of Appeals for the Ninth Circuit has continuously said that that is the rule of the circuit.

The Court: In other words, all that would be necessary to void the effect of all the other evidence of the case would be for the defendant to show that he had a safe deposit box somewhere and no one else knew what was in it except himself. That is what that would amount to.

Mr. Avakian: Your Honor ignores the burden of proof and circumstantial evidence rule, and let me give you the facts in the Bryan case because I think it fits so exactly, insofar as this point is concerned. In the Bryan case the indictment alleged evasion for the years 1943 and 1944. The government sought to prove its case on the net worth expenditures method, and the Court said:

"The net worth-expenditures method of establishing net income, sought to be applied in this case, effective only if the computations of net worth at the beginning and at the end of the questioned periods can reasonably be accepted as accurate."

Now, then, your Honor, in computing the defendant's proper net worth, the revenue agents gave him no credit for cash on hand at the beginning of the period, except what was in his bank account, and here is the testimony, your Honor. This question by the Court:

"Q. If you overlooked any assets that this defendant had, in your calculations, then your calculations would be in error or subject to revision?

"A. Yes, sir."

The Court: Wouldn't such erroneous calculations be in favor of the defendant?

Mr. Avakian: No, your Honor. It would depend. If the amount in cash was not included in the opening net worth and that amount was used to make inventory later, the omission of that cash from the opening net worth would work to his disadvantage. That is the point of the case. Here, for example, in this case we have evidence in December of 1943 \$17,000 was put in this safe deposit box. There is nothing reflected for 1943 and these agents have admitted they couldn't determine the amount and for that reason put nothing in. The testimony is there was at all times money there. We do not mean that if they told us at the time they were going to compute on the net worth method, records could be kept, but the income tax law says you can compute income on the basis of receipts and disbursements or the net worth method and they come along six years later and try to put a man in jail because he doesn't at that time have records to show what he had in the safety box on December 31, 1943. There

is nothing in the law that requires that records be kept.

In the Bryan case the questioning went on:

"Q. And you don't mean to say that he had no money whatsoever other than what is shown on that bank account, shown on January 1, 1941?

"A. I didn't say that.

"Q. Doesn't your audit assume that?

"A. That is all the money we could account for."

Then skipping down a few questions:

"Q. And yet you assume that the only monies he had were in the bank on the first day of January, 1941? A. That is all we took into account.

"Q. You don't know whether he had a lot of other money, or not? A. No, sir."

Now that is the end of the questioning, your Honor, and then the opinion of the appellate court goes as follows:

"These admissions are serious in this case because the Government must rely almost entirely upon circumstantial evidence, that is to say, upon the circumstance of the expenditure of considerably more money in the years in question than the Defendant took in from the operation of his night clubs and gambling enterprises. The evidence, being circumstantial, must exclude every reasonable hypothesis other than the guilt of the Defendant. The jury no doubt disbelieved, and had the right to disbelieve \* \* \*"

I might say in this case his wife testified that he

had approximately 180 thousand dollars in cash at the time. And the Court says the jury disbelieved that and had a right to disbelieve her:

“\* \* \* but in view of the auditor’s admissions that he was not able to say that his computation included all of the assets of the Defendant at the beginning of the period, together with the absence of any admissions, records, financial statements, book-keeping entries, or other findings, or evidence, tending to bind the Defendant as to the lack of additional assets at the beginning of the tax period, the evidence, in the light of the bill of particulars, was insufficient to make out a *prima facie* case against the Defendant on the net worth expenditure basis, and the case should not have been submitted to the jury since it did not exclude the hypothesis that the funds used in making some of the expenditures might have been from sources other than current business income.”

Now the Fenwick case, your Honor—

The Court: What page is that in 177 Fed. (2)?

Mr. Avakian: The case commences at page 488, your Honor. Now, in the Fenwick case, after reviewing the facts there to show that the evidence of the government did not include the possibility of their being other assets in existence at the beginning of the period, the Court made this statement—and, of course, this is a case in which there was a conviction and in which the court reversed the conviction:

“The weakness of the government’s position, stressed by defendant, is the uncertainty of the pro-



priety of the finding of defendant's net worth at the beginning of 1943. Of course, before the increased net worth method of proof is effective, the net worth of the taxpayer at the beginning of the tax year must be clearly and accurately established by competent evidence." Citing a number of cases.

Then continuing:

"By this rule we must test the sufficiency of the evidence offered by the government to establish defendant's net worth at the beginning of 1943."

And then as they discuss that the Court made this statement:

"There is no proof that he had not accumulated cash, or assets of other character over the 25 years during which he had been engaged in business."

Now I point out, your Honor, that in this case *the* *is in* even stronger position because here there is proof that there was cash in existence at the beginning of the period, which the prosecution's net worth computations did not take into account.

The Court: What proof is there of cash?

Mr. Avakian: Mr. Kyne's testimony, your Honor, that throughout this entire period there was cash in varying amounts in the safety deposit boxes and safes. And there is, as I pointed out a moment ago, of course, the testimony of Mr. Maundrell and Mr. Pechart also, but particularly with respect to the starting point, there is in addition to that general testimony, the fact that less than a month before the end of 1943, \$17,000 was put in the safe deposit box at one time. Here is the conclusion, your Honor, of the Fenwick opinion:



"Remembering that the government has the burden of proof in a criminal case, that the burden never shifts to defendant, that circumstantial evidence must be of such character as to exclude every reasonable hypothesis except that of guilt, it necessarily follows that, when the government relies upon circumstances of increased net worth and expenditures in excess of reported income to establish income tax evasion, the basic net worth must be established. The defendant is not compelled to make proof that he is innocent, but he must be proved guilty by the evidence beyond all reasonable doubt, and where there is uncertainty as to whether all the assets of defendant are included in the government's computation of net worth, it follows that its computations can not be relied on. Essential proof of no other assets is the cornerstone of the evidence of the government; that cornerstone being faulty, the whole edifice is so weakened as to be undependable as proof of guilt beyond all reasonable doubt.

"The judgment is reversed."

Now, your Honor, we are not making this motion simply to be wasting time. We are making this motion in all sincerity and we would like to have your Honor consider it in that light, because we are convinced, your Honor, on the basis of this record, the submission of this case to the jury would be reversible error.

Now, let me back up a minute, in the light of the wording of these cases, as to the law, to turn for a moment to what the circumstances are for the use of

the net worth method. The net worth method of computing income is an unusual method, your Honor. It is not the method that is ordinarily used, either by taxpayers or by the government. It is not the method that is contemplated by the income tax form. It is something that is unusual, it is used in particularly unusual circumstances, and the method can not be used unless those circumstances are present. Now, one of those circumstances which is essential to the use of that method is that the beginning net worth be established accurately. Now, these are not only rules that are applied——

The Court: I appreciate your sincerity in this argument but what you are saying to me is simply unless the government can tell you and this jury the number of dollars and cents in a safe kept by this defendant, that this case must fall.

Mr. Avakian: Your Honor——

The Court (Interceding): I will not go along on any such theory.

Mr. Avakian: That is not what I am saying, your Honor. If I may state to you what my position is——

The Court (Interceding): Why isn't that a fair statement of your position?

Mr. Avakian: I am trying to explain and maybe your Honor will see the difference.

The Court: All right.

Mr. Avakian: My position is before the government may use the net worth method of trying this defendant for tax evasion, as distinguished from other methods, they must, under the cases—and this

is not my idea, your Honor, I am quoting to you from cases—the cases hold, not only the Circuit Court of Appeals, but tax court in civil cases, hold the same thing—that before the government may determine income on net worth as distinguished from other methods, it must establish, with reasonable accuracy, the opening net worth. Your Honor, there has not been one iota of evidence in this case that there was a dollar's worth of income that wasn't entered in the books of these enterprises. The books were made available, they have not found one business transaction which was not entered in the books, so if we use the book method of determining income, your Honor, there would have to be an acquittal here and it is for that reason that the government is not using the book method, but is trying to use this unusual net worth method. It is fundamental, your Honor, that you can not wear a shoe unless it fits, you can not wear a hat unless it fits, and you can not use the net worth method unless the requirements set down by the courts are present. Now, the tax court in civil cases, where the burden is on the taxpayer and not the government, the tax court has said a deficiency assessed on the basis of net worth method, where there is no accurate established starting point, must fall, even though the taxpayer has the burden of proof. (Reads from 7 Tax Court Memorandum Decisions, page 847.) Your Honor, that is not my language. That is the tax court, which deals only with tax cases.

So, your Honor, what I am saying to you is this,

that the prosecution's proof itself shows that the circumstances which would permit the use of the net worth method are not present here. They are not present because the evidence shows that there was an existence at the beginning of this period of at least one asset, namely cash in safety deposit box, which can not at this date be determined as to amount. That being so, the net worth computation can not accurately be made, and you will recall that the agents of the government were frank enough to admit on cross-examination that their computations of net income on the net worth method would be accurate only if they have all assets and all liabilities and that to the extent that there was knowledge in existence, which they did not reflect in their net worth statements, their computations were inaccurate. Your Honor, I am sure, from what you have said, has been of the impression that that requirement was not present. I am sure your Honor would not have dismissed me so summarily when I started to make this motion had you been fully aware of the rules of these cases.

If I may be indulged by your Honor to develop that further, I would like to point this out to your Honor, that income tax evasion cases fall in two categories.

The Court: I will give you time tomorrow. We will be in recess until tomorrow morning at ten o'clock.

(Recess taken at 4:00 p.m.)

(In the absence of the jury.)

(Feb. 6, 1952—Notebook 340A—PP 1-27.)

Mr. Avakian: At the end of yesterday's session, I was about to state to your Honor that in tax evasion cases there are generally two types of proof of tax evasion that are referred to; namely, direct proof of unreported income, and the other is indirect proof of unreported income.

Now in cases where there is direct proof of unreported income, your Honor, there is a situation where, for example, the prosecution will present testimony to the effect that the defendant had a particular transaction which was not entered in the books or in his returns. For example, proof will be offered that at such and such a time the defendant received some income from Mr. A and the evidence in the record shows that Mr. A paid some income to the defendant at a particular time and then the evidence shows that that particular transaction, that particular receipt of income, was not entered in the defendant's books or was not reflected in the returns. There you have an example, your Honor, of direct proof of unreported income.

The Court: May I ask you a question. Do we find any note or record or entry in any of the records, books or exhibits here in evidence, of any amount of cash being in any of the safe deposit boxes or in the safe?

Mr. Avakian: The amount, your Honor, no, there is no evidence whatsoever as to the amount at any particular time.

The Court: Then that suggested to me again the thought which I questioned yesterday. There has been no entry of an estimated amount of any amount of cash in safes or boxes on this Exhibit 183.

Mr. Avakian: That is right, your Honor, that is the vice of it.

The Court: And your complaint is that there should have been?

Mr. Avakian: No, I don't see how there could be, your Honor, because we don't know the amount.

The Court: All right, then what is your point?

Mr. Avakian: My point is in view of the fact that we can not determine the amount of that asset, we can not accurately determine the net worth and if you can not accurately determine net worth, you can not use net worth method.

The Court: Do you dispute the statement which you heard made by Mr. Weaver, maybe one of two witnesses, and Mr. Brady, that the net worth method is used when books are not adequate?

Mr. Avakian: That is not quite true, your Honor. The law is this in the Internal Revenue Code of Regulations, that the income shall be determined by the methods used by the taxpayer, which is the books, your Honor, unless they will not clearly reflect the income, in which case the cases hold, under the law and regulations, it is then permissible to use another method, if that other method will more clearly reflect the income.

The Court: What other method?

Mr. Avakian: The other method the government is trying to use here is the net worth method and my

point, your Honor, is the evidence is such that the other method the government is trying to use, the net worth method, does not permit us to clearly determine the income, because you can't determine the starting point net worth.

The Court: What is the alternative?

Mr. Avakian: The alternative then in the state of this record is to use the books.

The Court: In other words then, in a charge of this kind, the mere fact that there existed a depository for money and that no one knew, except the defendant himself, what the amount of money was placed in that depository from time to time and so the books were inadequate, how then would you determine the income of the individual?

Mr. Avakian: Well, in a criminal case—I assume——

The Court: I am asking you that question, whether criminal or civil.

Mr. Avakian: Because the answer differs, that is why I make that distinction. In a civil case the burden of proof would be on the defendant and as long as the Commissioner charged a deficiency which had some reasonable foundation, the burden would be on the defendant to come forward and prove that the deficiency was wrong, but in a criminal case the burden is never shifted to the defendant, the burden is on the prosecution and unless the prosecution can show the starting net worth, they may not use the net worth method.

The Court: Let me ask another question. There is evidence in this record, is there not, that sums of



money in some amount were placed in this safe from time to time and in these boxes?

Mr. Avakian: That is right, your Honor.

The Court: And the mere fact that the government has no way, or has been unable, to determine the exact amount and can find no figure which it could use as a so-called starting point, then they can not use this present method of determining net income?

Mr. Avakian: It is for that reason that in the Bryan and Fenwick cases the Court held it was reversible error.

The Court: But in civil cases that could be done?

Mr. Avakian: In civil cases the burden of proof is reversed and it is up to the defendant to prove that deficiency assessed by the Commissioner is wrong, so you have a different picture. Even in a civil case though the tax court has held that where deficiency is based on an inadequate starting point it falls.

The Court: Now I want some more information. We have a legal argument here. You say this method is not the proper method, in view of the fact that we have no evidence as to the amounts of money in these depositories.

Mr. Avakian: Correct.

The Court: What method would be the correct method, in your opinion?

Mr. Avakian: On the basis of evidence in this record?

The Court: Yes.

Mr. Avakian: On the basis of evidence in this



record, the proper method would be the use of the books, for this reason, your Honor, and this is what I was going into when I talked about direct and indirect proof.

The Court: But the books do not show any amount of cash in these depositories.

Mr. Avakian: That is immaterial in determining income on the book method. That is the point. Let us go back to the time you were engaged in law practice—use me for an example, engaged in private law practice. I keep books and records of all money received and expenses paid out, but I do not keep books and records on the amount I have in the bank or in my wallet or loan to people or people have loaned to me because in determining income on the method of receipts and disbursements it is immaterial how much money you have on hand somewhere; the important thing is what did you collect as income, what did you pay out as expenses. Suppose, your Honor, you were trying to determine my income on the net worth method. I couldn't tell you now what my net worth was ten years ago. I would have no way now of proving that to you because of the fact I have never kept any record of the assets and liabilities in that form. The only records I have kept, your Honor, are items of income and items of expenses. I have loaned money to people, my brother and my father and friends, people have loaned money to me from time to time——

The Court (Interceding): Well, it is a crime

to fraudulently hide assets or make false income tax returns.

Mr. Avakian: No question, but let us not assume that conclusion.

The Court: It is a crime.

Mr. Avakian: Oh, yes.

The Court: Then any one who wants to violate the law in that respect, all that person would find it necessary to do would be to get hold of a safe somewhere and keep it in his office, if your theory is correct? That is your view?

Mr. Avakian: Absolutely not, your Honor, because the cases are full of convictions which have been sustained for tax evasion in instances of that kind, where the government has been able to prove that there was direct proof of unreported income, they proved that the defendant had transactions with Mr. A which he did not report, so they prove a starting point. They show, for example, that the defendant went through bankruptcy, which shows zero, or show that the defendant submitted financial statement to his bank at or about the time of the starting point, which fixes the starting point, or the defendant admitted to the agents what he had, which fixes the starting point.

The Court: What is your suggestion as to determining the starting point in this case?

Mr. Avakian: At this time in this case I do not see how any starting point can be determined. That is why I say you can not use the net worth method without a starting point.

The Court: Then the only alternative would be to accept the defendant's books as correct and determine from the entries in those books.

Mr. Avakian: And that is exactly the point of the Bryan and Fenwick cases. When the government is proceeding on circumstantial evidence——

The Court: If their statement is the correct statement of law, you have opened the door wide to fraud.

Mr. Avakian: No, I disagree and intend to show you that this same rule is applied by this circuit as to the burden of the prosecution in a circumstantial evidence case, and that is what I was going to go into, your Honor.

The Court: Very well.

Mr. Avakian: I think in the background of all this, your Honor, we have to remember the rules of burden of proof in a criminal case and we have to remember the rules of circumstantial evidence, because this whole question——

The Court (Interceding): I have those rules in mind. Do not waste time in arguing those rules.

Mr. Avakian: I gather from your Honor's remarks that you are afraid the rule of the Bryan and Fenwick cases would permit the defendant to avoid taxes unless the courts forced him to come forward, which——

The Court (Interceding): The mere fact the defendant has under his control, or in his possession a depository for money and the government is unable to ascertain the exact amount, that they are forestopped in proving a case of this kind——

Mr. Avakian: That is right, your Honor.

The Court: —I can not go along with that.

Mr. Avakian: That same thing applies in a murder case. They can not force the defendant to come forward and testify as to his knowledge. The government has to prove the case. Now, your Honor, in a direct income case, as I mentioned a moment ago, the burden is that of showing that there was some particular income transactions which were not put on the books. Now in this case, your Honor, we have a number of businesses. All these businesses were managed and operated by persons other than the defendant, that is, other people had direct supervision and control. The records of these businesses were maintained by these other people, Mr. Maundrell, Mr. Kyne, etc., Mr. Slater and Mr. Ayton, who unfortunately now are dead. The entries in the books were maintained, in most instances, by some of the employees. For example, for the Menlo Club, there were some of the cashiers that made out the poker sheets for each shift and Mr. Weaver admitted that the books of the Menlo Club contained every penny shown on the poker sheets for the year 1946, where sheets were available. Now, your Honor, in spite of that fact and in spite of the fact that if there were any income which by-passed the books, it would have had to be done with the knowledge and connivance of this large number of other people, in spite of the fact that the government has investigated the case for five years, they haven't come forward with proof of one penny of income which by-passed the books. They have not produced

one cashier who says, "Although we took in \$500, I have only \$400." They haven't produced a single transaction that is not in the books. So we do not have any evidence, your Honor, after over thirty days of trial, five years of investigation of a case in which all of the transactions were handled by parties other than the defendant, by a large number of them, we do not have one iota of proof of direct evidence of unreported income. Instead the government says, "We think there was unreported income because we contend the net worth increase is more than the amount reported." Now, your Honor, they can't say that until they have accurately determined the net worth increase and they can't accurately determine the net worth increase until they get all the assets and all the liabilities.

Now your Honor is worried that the rule of the Bryan and Fenwick cases impose an unbearable burden on the government. Let us look at it the other way—

The Court (Interceding): It isn't that, but it opens the door for people evading just taxes.

Mr. Avakian: It is the same thing. You are saying the government can not prove fraud with the Bryan and Fenwick cases if the defendant has money in safe deposit boxes. Look at the other side. What about the burden upon the defendant if what you contend the rule should be true. Here comes the government. They say, eight or nine years ago you had these assets that we know as to amount and these liabilities that we know as to amount and there was another asset, the amount of which we do not

know, and it is up to you then to satisfy the jury what you had on hand eight or nine years ago—suppose, for example, that nine years ago I bought a house and paid a five thousand dollar down payment. Let us suppose I had that five thousand dollars in my safe deposit box before I made that payment. Now actually the making of the down payment on that house would represent no net worth increase whatever. It is simply a transfer of money from my safe deposit box into another asset, but the government would be saying, under your rule, that “You have a five thousand dollar increase in net worth and it is up to you to prove to the jury’s satisfaction that you had that five thousand dollars in your safe deposit box.”

Now, your Honor, if the government had said to me ten years ago that “It is required that you keep a record of money that you have in safe deposit box,” then perhaps it would be justifiable to put that burden on me now, but when the law says all I have to do is to report the items of income that I receive and the items of expenses I pay out and then nine years later the government comes to me and says, “Now you must prove, I am telling you, for the first time, that you must prove what you had in your safe deposit box nine years ago,” how about an unbearable burden placed on the defendant? That is why the Bryan and Fenwick cases say you can not use net worth method unless you establish net worth starting point.

The Court: Your statement may be a correct statement of law, but I do not think it applies. The

government has not asked the defendant to come forward with any proof.

Mr. Avakian: Your rule would require—it would say you explain to the jury what you have, instead of making the government prove.

The Court: If this estimate, or the conclusions, of net worth of this defendant, as determined by these expert witnesses, had to do with or depends in any way upon any amount of money in the safe or in the deposit boxes, then I think there might be some merit to your argument.

Mr. Avakian: Your Honor, if I may accept your Honor's statement at face value, then I think you will have to direct an acquittal here, because the uncontradicted evidence is that there was some amount, and when you have an asset at the beginning of the period and you don't take its value into account, you can't determine what the increase was between the beginning and end of the period. In other words, your Honor, if there is an asset there of undetermined value, then you have not determined the net worth. The net worth is the difference between all the assets and all the liabilities. You can't take a partial list of assets and partial list of liabilities and subtract one from the other and say that is net worth. The definition of net worth, as every government agent testified, is the difference between all the assets and all the liabilities.

The Court: There is another question involved here. The government is required to prove beyond



reasonable doubt the allegations of this indictment.

Mr. Avakian: That is right.

The Court: Does it make any difference by what means those allegations are established, whether net worth or some other? Are they confined to base their testimony on that point to any particular method?

Mr. Avakian: That is all they offer. The net worth method is all they offer. We haven't selected that method; we haven't told the government, "You are limited to anything," yet in over thirty days of trial they rely only on the net worth method.

The Court: How can we say that when they use entries and the books as the basis of some of these—Exhibit 183?

Mr. Avakian: They use the books not to determine income, only to determine assets. They have used the net worth method of determining income and gone to certain selected entries in the books for the purpose of attempting to evaluate assets and disbursements. In the opening statement of Mr. Pike, he said, "We are going to use the net worth method" and the only method he said they were going to use and the only method they have tried to use. I told your Honor a moment ago in this Circuit the rule of circumstantial evidence that governs the law of criminal cases is applied and the basic rule is in a circumstantial evidence case the case must not be submitted to the jury unless the circumstantial evidence excludes every reasonable hypothesis—



The Court: That is an instruction I am going to give to the jury in this case. There is no argument on that.

Mr. Avakian: Let me then demonstrate the application of that rule by the Ninth Circuit to a case which, although it is not a tax case, is along similar lines in its problem to what we have here. *Karn vs. United States*, decided by the Ninth Circuit in 1946 and reported in 158 Fed. (2), page 568, a decision by Justice Bone. In that case, your Honor, there was a conviction for stealing the sum of approximately \$1079 in currency and silver from a cash register in a place known as the Chena Bar, I believe in Alaska. The evidence showed the defendant had been at that bar earlier in the evening, that later that same evening he had borrowed an insignificant amount of money at another club from Gilbertson, used a part of that borrowed loan that same evening to repay a \$10 loan, and next morning when he was arrested he had in his possession \$377 in currency, including in which there was a soiled ten dollar bill. There was testimony from the bartender of the Cheno Bar that prior to the robbery there was in the cash register a soiled ten dollar bill similar to the one found next morning in the defendant's possession. The defendant did not take the stand. The State produced the man Gilbertson, from whom the defendant borrowed money that evening to repay his loan, to testify how much the defendant borrowed from him. After the conviction, the Circuit Court, the Ninth Circuit,

reversed the conviction and held that the Court should have granted a motion for acquittal——

The Court: I agree with that too, if that is the state of the evidence, no question in my mind.

Mr. Avakian: Then, your Honor, let us see how that bears here. What your Honor is saying is, if the government can't determine the amount of cash he had in the safe deposit box, it will be opening the door to evasion if the government was barred from using the net worth method. In the Karn case the government was required by the Circuit Court to establish itself in order to make out a case——

The Court (Interceding): I can't see where that has any application here?

Mr. Avakian: Let me read to you from the Court's statement, quoting now from the opinion:

"The prosecution relied entirely upon circumstantial evidence for a conviction. It is sufficient to say that under such circumstances the evidence must not only be consistent guilt, but inconsistent with every reasonable hypothesis of innocence. The evidence should be required to point so surely and unerringly to the guilt of accused as to exclude every reasonable hypothesis but that of guilt. (Citing cases.) Our considered judgment is that the evidence in this case falls far short of meeting this exacting standard."

Then the Court commented, your Honor, on the prosecution's proof, that the circumstances that the night of the robbery, before his arrest, the defendant had borrowed money. He had used borrowed money to pay back a loan and he had in his posses-

sion next morning \$377 and included in which was a soiled bill similar to the one in the register. Now the government argued that those circumstances were such as to permit the jury to infer that the night before he did not have any money because he had to borrow and the fact he had \$377 in his possession the next morning indicated that he might have stolen the money, particularly since there was a similar bill. Now, the Court rejected that. The Court said that that is not sufficient circumstantial evidence, it must exclude every reasonable hypothesis.

The Court: I am well aware of that and I am going to instruct the jury to that same effect.

Mr. Avakian: Now your Honor has undoubtedly had personal experiences in working this rule and you know from your own experiences that with prosecutions that they are many cases in which there are circumstances pointing to the guilt of the defendant, but unless the circumstances are so complete as to exclude every reasonable hypothesis, you can't go to the jury on it. Now, your Honor, one of the circumstances here, which every case I know of says is an essential circumstance, is getting the starting point of the date accurately.

The Court: Sometimes you can illustrate a point by a ridiculous example. You can carry your idea along a little farther and instead of putting the money in the safe, put it in the defendant's pocket.

Mr. Avakian: Some of it could have been there. I have some money in my pocket and I assume your Honor has.

The Court: And because it would be impossible for a third party to determine how much money you have in your pocket, your income can not be estimated, on your theory.

Mr. Avakian: If what you are saying, the Bryan and Fenwick rules are ridiculous——

The Court (Interceding): Personally I think they are.

Mr. Avakian: Let me call to your Honor's attention that those ridiculous rules, as your Honor describes they, were enunciated by the Circuit Court of Appeals by appellate judges, and furthermore, let me call this to your attention, in the Bryan case the defendant went up to the Supreme Court on another point, and although the case went to the Supreme Court, the Department of Justice did not appeal the holding of the court that no starting point had been established, so apparently the Department of Justice does not think that is a ridiculous rule and I might say to your Honor that I have been employed in the Department of Justice in the tax division and I have passed on the matter of prosecuting cases involving inadequate starting point, but not only I, but other lawyers in the Department of Justice, charged with the responsibility of prosecuting income tax cases, have to my knowledge always felt that you couldn't prosecute an income tax case on the net worth basis alone without direct evidence of unreported income, unless you did establish the starting point. Now maybe we are all ridiculous, your Honor, but I call that to your

attention to evaluate whether or not that rule is ridiculous.

Now it seems to me, your Honor, that the ridiculous thing to do would be to say that the jury may speculate just how much money he had. There is no proof on it, but the jury may speculate and if they speculate one way, they can convict, and another way they can acquit, but the rule is in a circumstantial evidence case the jury may not speculate and the case may not be submitted to them unless there is a solid foundation of evidence, rather than speculation.

The Court: No, the instruction I am going to give in this case on circumstantial evidence is, if the jury believe the facts as shown by the evidence in this case are all consistent with the supposition that the defendant is guilty, and can not reconcile the circumstances produced in evidence with any other supposition than that of guilt, it is their duty to find the defendant guilty, but if they do not so believe, they should find the defendant not guilty.

Mr. Avakian: Your Honor, the Ninth Circuit held such an instruction erroneous because it did not include additional language—

The Court: We will argue that later.

Mr. Avakian: In the instruction though it must exclude every reasonable hypothesis of innocence. That is the language that was given in the case of *Paddock v. United States*, 79 Fed. (2), page 872, an opinion by Judge Wilbur.

Now, your Honor, there is one decisive point in

connection with this motion for acquittal that I want to make, and that is the point, your Honor, that the prosecution has placed the Court in a dilemma which would require, on either alternative, an acquittal. One part of the dilemma that the prosecution has placed the Court in is the combined matter of whether there were partnerships and whether the books and records which have been introduced in evidence were legally and properly obtained and used in this case.

Now Mr. Thompson stated, in answering a motion to strike, referred to Maundrell and Kyne and possibly others, as partners. Yet the theory of their case is that these men were not partners. Now the prosecution can not ride both sides of the fence on that proposition. Either these men were partners or they were not. If these men were partners, your Honor, the case should be withdrawn from the jury because the case falls unless partnerships are ignored. If they were not partners, your Honor—and that is the basis on which they are asking that it goes to the jury—then it is now clear that the books and records which they obtained and used in part, and in part still have in their possession, were illegally obtained, because the evidence shows that they were obtained, not from the defendant, but from these other parties. Now if these other parties were not partners, were simply employees, the government had no right to take those books without the defendant's consent. They have the right to take books with the consent of Mr. Kyne and Mr. Maundrell only if Kyne and Maundrell, as

partners, had a proprietary interest in those books. If Mr. Kyne and Mr. Maundrell were simply employees and the books then belonged solely to the defendant, the government had no right to take those books without the defendant's consent and the Court had no right to order us to produce the portion which had been returned to us against our wishes, for the reason, your Honor, no other party but the defendant had any right to surrender these books to the government.

Your Honor will understand we are simply pointing out the dilemma that the prosecution has brought into the case. It is our contention, of course, that these were partnerships, but if these were not partnerships, your Honor, then under the established rules, and I can cite your Honor—

The Court (Interceding): You say it is your contention that these are partnerships?

Mr. Avakian: Yes.

The Court: Then you argue that the failure of the Court to grant your motion to suppress this evidence—such motion could only be based on the theory that they are the defendant's books.

Mr. Avakian: No, I did not make myself clear, your Honor. What I am saying is this, that either these were good partnerships or not. If they were good partnerships, our motion to acquit should be granted, for the reason that there is then no offense. If they were not good partnerships, if the partners were ignored, then, your Honor, it was illegal to take the books.

The Court: Then when you made your motion



to have the records returned to you, you had the theory at that time that these were not partnerships?

Mr. Avakian: No, your Honor; oh, no; because your Honor, even though they are partnerships, each partner has a proprietary interest, each partner can demand the right to inspect the books, each partner has the right to possession of them, so our motion was based consistently with the partnership theory. We were simply coming in as one partner, namely the one charged with crime, and asking for the opportunity to examine books in which our client had a proprietary interest as a partner. Your Honor denied that motion, your Honor denied our motion for an opportunity to examine the records still in the possession of the plaintiff, on the theory, as I understood your Honor's ruling, that the government had properly obtained possession of the books from third parties who turned them over. Now that would be proper, your Honor, only if those third parties were partners. If they are not partners, as the prosecution contends, they had no authority to turn those books over, the government had no authority to take them from those people, so that is the dilemma, why our motion for acquittal includes the ground that if the prosecution is correct in its contention that these are not partnerships, then the case should be withdrawn from the jury, because the only possible basis on which it could be submitted to the jury shows evidence illegally obtained from third parties prior to the trial and illegally obtained from us prior and during the



trial. That is the additional ground of our motion to acquit, including the net worth starting point I was discussing before, and for your Honor's consideration I would refer, as authority on this additional ground, Wigmore on Evidence, 3rd Edition, Section 2325 and related sections, including 2292, and a book entitled, "Fraud Under Federal Tax Law," by Harry Graham Balter, 1951, the use of which I would be glad to make available to your Honor if you desire. (Reads from book.) That last part would not be applicable; the first part would bear directly on our motion—the possession of which we desired to obtain because its use becomes important to use in the preparation of the trial. Now your Honor's justification for that ruling was that these releases had been obtained originally by the government from third parties who had agreed that the government could have them. Now, your Honor, that agreement of those third parties, which was the basis for your Honor's ruling, would have no legal effect whatsoever unless those third parties had a proprietary interest in these books as trustees.

The Court: Or an authorized agent.

Mr. Avakian: There is no evidence they were authorized in any respect to turn these books over by the defendant Remmer. No evidence whatsoever about that; in fact, they said when the agents came in and asked for them, they turned them over. That is all the evidence, your Honor. If I may call your attention to Mr. Campbell's statement on

the hearing on motion to inspect these books November 15, 1951, in Las Vegas——

The Court: I will tell you again it was made a short time before, on the eve of this trial, which would have necessitated a postponement, and you had five years to make the motion.

Mr. Avakian: No, your Honor, that is not true. We never were denied access to these books until November 7th or 8th, 1951, and we immediately filed the motion.

The Court: Well, that is the reason I denied the motion.

Mr. Avakian: The correspondence was before your Honor, showing that Mr. Campbell in November, 1951, for the first time, gave us the double talk that we could examine the books provided we got the consent of third parties, and he wouldn't name them.

The Court: I don't think that should remain in the record.

Mr. Avakian: It is in the record now, in the affidavit.

The Court: That statement you made about Mr. Campbell's double talk may be stricken.

Mr. Avakian: His letter is in the record.

The Court: I will admonish you not to make references of that kind.

Mr. Avakian: The defense have been accused of a lot of things.

The Court: I don't know anything you have been accused of.

Mr. Avakian: Yes, of withholding records and——

The Court (Interceding): Are we trying the defense or Mr. Remmer? Proceed with your argument.

Mr. Avakian: By defense, I mean Mr. Remmer.

So, your Honor, we submit, first of all the motion for acquittal should be granted, for the reason that the prosecution has not established a proper starting point for net worth, and if your Honor cares, I can go through numerous cases showing the distinction the courts draw; and, secondly, we submit to your Honor that the motion for acquittal should be granted on either alternative of this situation, that if the partnerships are recognized, then there is no showing upon which the jury could find the defendant guilty, and if the partnerships are not recognized, then the case of the prosecution is based, of necessity, upon evidence illegally obtained and retained, which does not furnish a proper basis for submission of the case to the jury, and I again would request that your Honor consider that it is not a dogmatic matter as to whether the defendant must come forward with proof as to what was in the safety deposit boxes. On the contrary, it is putting an unbearable burden upon him, or anybody else, to try to determine now what was in the safety boxes eight or nine years ago and to directly or indirectly apply a rule of law which would impose that burden upon the defendant would violate the fundamental proposition that the defendant would be presumed to be innocent, that

he need not come forward with evidence of innocence; on the contrary, the government must prove guilt beyond a reasonable doubt and any circumstantial evidence case must, in order to warrant submission of the case to the jury, present evidence which excludes every reasonable hypothesis of innocence and present evidence which is inconsistent with any theory of innocence and is consistent only with the theory of guilt.

Mr. Campbell: If the Court please, it is the contention of the government that the principles relied upon by defense counsel in the Bryan and Fenwick cases are not good law. They are not the law of this circuit and if they were the law of this circuit, it would be time that that law be changed.

In that connection I first wish to refer your Honor to the very strong language of Judge McCord in the Bryan case in dissenting vigorously, and I do so because some of the language is very similar to that stated by your Honor in the criticism of that case. Judge McCord says as follows, reading from page 227. The case, of course, is reported at 175 Fed. (2), 223. This is from the dissenting opinion:

"The majority predicate their reversal on the sole ground that the evidence was insufficient to make out a prima facie case against the defendant on a net worth-expenditure basis, for the reason that the testimony of the government auditor did not expressly exclude the hypothesis that some of the large expenditures by defendant 'might have been from sources other than current business income.'

This is sheer speculation and conjecture, and an unwarranted presumption in favor of defendant's innocence after he has been fairly tried and convicted. Moreover, it is an unreasonable hypothesis which has already been rejected by the jury as manifestly incredible and unworthy of belief. The ultimate effect of the decision is to shackle the government to a practically insurmountable burden of proof in net worth-expenditure cases concerning matters which are peculiarly within only an evading defendant's knowledge.

"In all cases, such as here, where a defendant has either destroyed his records, or they are otherwise unavailable, the government must of necessity resort to other indirect methods of proving unreported income, such as (1) by an analysis of the defendant's bank deposits; (2) by showing an increase in net worth on the net worth-expenditure basis; or (3) by evidence of purchases, expenditures and investments made during the tax years on which the prosecution is based. Many tax offenders of the worst type would go unwhipped of justice if the government were not allowed to establish unreported taxable income by this type of circumstantial evidence. Each of the above methods is predicated upon the sound legal proposition that evidence of a large amount of unexplained funds or property in the hands of a defendant during the tax years under scrutiny establishes a prima facie case of understatement of income during that period. (Citing cases.) It is then incumbent upon the defendant to go forward and offer proof in explanation of this unreported excess income, much in the

same manner as would be required under the 'possession of recently stolen goods' rule. (Citing cases.) It would be manifestly unreasonable to require the Government to give such a defendant a bill of particulars on his own hidden and unreported income, or to offer proof to exclude the possibility that such other secret income does not in fact exist. (Citing cases.)

"The unusual contention on behalf of a defendant in this type of case is that the unexplained increase in net worth results from expenditure of funds accumulated and secreted in earlier years, for which prosecutions are then barred by the statute of limitations. Obviously, because of the difficulty and inaccessibility of such proof, the Government could not possibly wholly rebut such a contention, as only the defendant himself knows whether the defense is made in good faith. In such instances, after the Government has offered all proof available, the defendant should not be permitted to stand silently by and thwart a conviction on the claim that a failure to prove unknown assets does not satisfy net worth requirements. Manifestly, the truth and good faith of such a defense is for the jury alone." (Citing cases.)

And so the Court goes on in similar manner.

Now I attempted to secure, before appearing here this morning, a recent article in the Georgetown Law Review, but I found it was inaccessible in the legal reprints and we communicated with Mr. Bible and others who are graduates whom we thought

might have the article available. It discusses the Bryan and Fenwick cases and points out among the circuits which do not subscribe to the holdings in those cases, as demonstrated by other decisions, are the 2nd, 4th, 6th, 8th and 9th circuits. Now the case in the 9th circuit which sets forth the method to be followed in these cases, and which has previously been cited to your Honor and which I will not read again, is that of *Barcott v. United*, reported at 169 Fed. (2), 929, in which the decision was written by Judge Orr.

I do wish to read to your Honor, however, some of the decisions of circuits commenting upon the Bryan and Fenwick cases and to the soundness of the rules which they attempt to enunciate. The first case to which I wish to refer is that of *Garipey vs. United States*, Sixth Circuit, decided May 28, 1951, reported in 189 Fed. (2), at page 459. Reading from page 462:

"From 1938 on, according to the computations of the Treasury agents, the appellant's practice materially increased, as did the net worth of his assets. In an exhibit reflecting their computations and indicating the reported income and net worth increases, the table shows a net worth at the end of the tax year 1945, of \$128,938.52. It is here reproduced and set forth in the margin.

"The transactions upon which this computation was made are all sustained by evidence. They were not successfully controverted. It is true that appellant's counsel made vigorous attacks upon the accuracy of the computation. At best it was, of



course, but an estimate, but as an estimate it was entitled to the consideration of the jury because based on substantially the entire evidence in the record. (Citing cases.) The principal attack of the appellant upon the evidence which sustains this computation is two-fold. The first is the challenge to the accuracy of the appellant's net worth, or lack of it, at the base period, and secondly is the contention that each item of evidence must be so fully and accurately established that it permits no reasonable doubt as to the fact upon which reliance is placed." Then skipping over certain matters which are not related here, setting out some general rules, the Court goes on:

"The appellant's reliance upon *Bryan v. United States*, 5 Cir. 175 Fed. 2d 223 and *United States v. Fenwick*, 7 Cir. 177 F. 2d 488, is of little avail to him because there was no such comprehensive investigation either as to the net assets at the base period or subsequent increases as was here undertaken. Moreover, in the *Bryan* case, a vigorous dissent weakens the conclusion there arrived at, and the *Fenwick* case appears to be in conflict with *United States v. Hornstein*, 7 Cir. 176 Fed. 2d 217, decided by the Seventh Circuit but a few months prior to *Fenwick*."

The *Fenwick* case also being a Seventh Circuit case.

"Judge Miller of this court, writing in *Brodella v. United States*, 6 Cir. 184 F. 2d 823, had no difficulty in distinguishing the *Bryan* and *Fenwick* cases



from cases involving facts similar to those here produced."

The Court: Unless the defendant wants to offer something in addition, I am ready to rule on this motion.

Mr. Avakian: I would like to comment on the Barcott and Gariepy cases.

The Court: You may do so.

Mr. Avakian: The Barcott case, to begin with, Mr. Campbell did not mention to your Honor that the prosecution witnesses, in their net worth computation, set up as cash in safe deposit boxes at the starting point the sum of twenty-three thousand dollars. They did not leave a blank, a question mark, they set up an amount, twenty-three thousand dollars, which asset reflected in favor of the defendant. Secondly, in the Barcott case there was evidence of attempt by the defendant to bribe the revenue agent who was investigating him and the Ninth Circuit relied on that as circumstance indicating guilt which would warrant submission to the jury.

In the Gariepy case, decided last fall by the Sixth Circuit, the significance there to distinguish it from this case is that Gariepy had just gone through medical school and internship and just completed that at the time it the starting point in his case and there was evidence that he borrowed money to go through medical school and set up his practice at the time of the starting point, your Honor, so you do not have the situation there factually that you have here. Here, your Honor, we have a case in which it is admitted, and part of the uncontradicted evidence,

that there was some cash. There is an asset. Suppose, for example, your Honor, there had been a house instead of cash in safe deposit box, but the government said, "We can't determine what the cost of that house was that you had at the beginning point, we can't determine it, so we won't give you any credit for it."

The Court: Wouldn't there be an accounting of that to determine the cost of that house if you didn't have actual evidence of the transaction? Isn't there an accounting of that by which the fair cost of that may be known?

Mr. Avakian: Not cost. Value, yes, but there may be many instances in which the cost of a house could not be determined seven or eight years ago. In most instances it could, of course, but I am assuming those instances in which there is an asset, namely a house, of a value that can not be determined. Without determining your value, you can not determine net worth—

The Court (Interceding): But you cannot hide a house in your pocket or safety deposit box.

Mr. Avakian: But if you do not know the value, it is the same thing. Nobody was hiding money and your Honor's statement indicates your Honor has pre-judged. The use of the word "hiding" is not a correct term.

The Court (Interceding): Just a minute—I do not intend to be assailed by you, or any other lawyer. I have not pre-judged the case. You had better be careful about making those remarks to

me. Now don't say any more. You can't say another word.

Mr. Avakian: If I can't say any more, I won't.

The Court: Are you through with your argument?

Mr. Avakian: Well, your Honor, I have stated the points upon which the motion for acquittal is based and I have stated the basic legal propositions upon which we rely. There is exhaustive discussion which could be undertaken, of course, but at this moment I will submit the motion, unless your Honor cares to have further discussions.

The Court: The motion is denied. It stands submitted and is denied.

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Wednesday, February 6, 1952—2:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

Mr. Gillen: We will call as our first witness, your Honor, Mr. William Remmer, the brother of the defendant.

**WILLIAM REMMER**

being duly sworn, testified as follows:

**Direct Examination**

By Mr. Gillen:

Q. Your name is William Remmer?

A. Yes.

Q. Will you relate to us, please, what is your address?

(Testimony of William Remmer.)

A. 50 University Drive, Oakland.

Q. That is in California? A. Yes.

Q. What is your business?

A. I am an automobile dealer.

Q. Will you state the name of your firm and where it is located?

A. Remmer & Jordon, 3927 E. 14th Street, Oakland.

Q. Mr. Remmer, you have the agency for some nationally known automobile?

A. That is true, the Pontiac.

Q. How long have you and Mr. Jordon been in business in that firm? A. About 22 years.

Q. You are a married man, Mr. Remmer, and make your home with your wife in Oakland at the address given? [2555] A. Yes.

Q. Are you acquainted with the defendant, Elmer Remmer? A. Yes, I am.

Q. He is your brother, is he not?

A. Yes, sir.

Q. And during the period of time between 1944 and up to the present time, did your brother, Elmer Remmer, ever take from your place of business any automobiles? A. Yes.

Q. Will you tell us, as near as you can recall, what type of automobile, the value of the automobile and approximately when it was purchased?

Mr. Campbell: May I inquire if he brought any record with him in that regard?

Mr. Gillen: I don't know. I am asking him if he can recall.

(Testimony of William Remmer.)

A. Yes, I can recall—during this particular time?

Q. During the period of time from 1944 until the present time. A. Yes.

Q. Will you relate, as near as you can remember, what those transactions were?

A. He bought a used Dodge pick-up from me and I believe it was \$465.

Q. And when was that?

A. I think that was in 1944. [2556]

Q. You say a pick-up, by that you mean a truck, do you not? A. Yes.

Q. Now, did he buy any other car in 1944 from you? A. No.

Q. Did he pay for that car? A. No.

Q. Did he pay for it up to the present time?

A. No.

Q. Did he buy any other automobile from you in 1945? A. No.

Q. Did he buy any automobile from you in 1946?

A. Yes.

Q. And what was that, Mr. Remmer?

A. He bought a 1946 Pontiac sedanette—either a sedanette or convertible.

Q. What was the price approximately?

A. Approximately \$1600.

Q. And directing your attention to the same year, did he buy another automobile from you in that same year? A. Yes.

Q. And what was that automobile, the second automobile he bought in 1946?

(Testimony of William Remmer.)

A. A Pontiac sedan or sedanette.

Q. Was there any trade-in or arrangement made between your firm and him with regard to the original Pontiac sedanette [2557] he bought earlier that year?

A. Well, I do not recall which one it was, but there was a trade-in involved in one of the two Pontiacs that he bought.

Q. Now, did he pay for either of those automobiles or on the trade-in did he pay the differential or any part of the purchase price?

A. Well, the trade-in was clear; he gave me that as part of the purchase price, but the balance, no, he did not.

Q. The automobiles were not paid for, the Pontiac?      A. That is correct.

Q. The original Pontiac was not paid for in 1946 and whatever was the differential on any trade-in with the second Pontiac, that was not paid?

A. That is correct.

Q. Now, with regard to the Dodge pick-up used truck, which you say was purchased by your brother from you in 1944, what was done, insofar as your company was concerned, with the charging up of that amount?

A. Well, at the end of the year my partner and I adjust our own personal accounts and that item was charged to my account and I paid for it.

Q. In other words, you paid it into your firm?

A. That is right.

Q. It was charged to your account and you paid

(Testimony of William Remmer.)

your firm for that obligation, so that formed a personal obligation between [2558] your brother and yourself?      A. Correct.

Q. And was that likewise the situation in regard to the transaction involving the two Pontiacs in 1946?      A. That is correct.

Q. Your partner and you adjusted between you and it was charged to your account and you paid your firm, is that correct?      A. That is correct.

Q. So that became an obligation between your brother and yourself, is that correct, a personal obligation?      A. Yes.

Q. Now, between the year 1945 up until the year 1950, did you make any loans to your brother, Elmer Remmer?      A. Yes.

Mr. Gillen: I am sorry, let me withdraw the question.

Q. Between the years, or let us say, during and between the years commencing in 1944 to and including the year 1950, did you make any loans of money to your brother, Elmer Remmer?

A. Yes.

Mr. Campbell: Objected to as immaterial, so far as the years after 1946 are concerned.

Mr. Gillen: It is really. I will then reframe my question.

Q. Let me ask you if from the beginning of the year 1944 until and including the end of the year 1946, you made any loans to [2559] your brother, Elmer Remmer?      A. Yes.

(Testimony of William Remmer.)

Q. And were they in different amounts and at different times? A. Yes.

Q. Did you usually make those loans by cash or by check? A. Check.

Q. Were they your personal check or company check? A. Personal check.

Q. And could you give us the approximate amounts—I mean, a good average of the amounts that would be borrowed?

Mr. Campbell: Objected to—the checks would be the best evidence.

Q. Well, do you have the cancelled checks?

A. No, I do not keep checks that long.

Q. You do not keep checks that long?

A. No.

Q. Can you tell us from your own personal recollection the usual amounts of money he borrowed from you, or the aggregate amounts?

A. Well, I know the total amount, but I don't know, because I would do work on his car and if it was not covered by insurance—as I say, once a year my partner and I settled our accounts, that would be charged—I know the total amount, but I don't know how much I gave him at individual times, no.

Q. Can you tell us the total amount your brother now owes you? [2560]

Mr. Campbell: Objected to as immaterial what he now owes him. It is what he owed him as of December 31, 1946.

Q. All right. Can you tell us the total or ap-



(Testimony of William Remmer.)

proximate total, amount that he owed you as of the year 1946?

A. Well, I would say between eight and ten thousand dollars.

Q. Now, did that eight or ten thousand dollars include the automobile transactions or exclude the automobile transactions and only cash?

A. It includes them.

Q. And the automobile transactions would involve slightly between two thousand and \$2500?

Mr. Campbell: Objected to as leading question.

The Court: Sustained.

Mr. Gillen: I think it was a summarization of what he already testified to, your Honor. I will ask it in a different form if counsel objects to it.

Q. You stated you believed that your recollection is that the pick-up truck was \$460, is that correct? A. \$465.

Q. Can you tell us what the first Pontiac was?

A. Well, I don't know exactly the equipment, but in 1946 the automobile that he bought would be approximately between 15 and 16 hundred dollars.

Q. And a trade-in of an automobile the same year, would there be a very great [2561] differential? A. I beg your pardon?

Q. A trade-in—

A. No, I would say on that particular car that was involved there was approximately \$500.

Q. Five hundred dollars additional on the trade-in transaction? A. Yes, additional.

Q. So would you say that it would be a fair

(Testimony of William Remmer.)

estimate that the automobile transactions for the period between the beginning of 1944 and end of 1946 between your brother and yourself amounted to approximately \$2500?      A. Yes.

Mr. Campbell: Objected to as leading and suggestive.

The Court: Objection sustained. The answer will go out.

Q. Can you tell us how much?

A. Approximately \$2500.

Q. And the difference between that and eight or ten thousand dollars, would that have been money loaned to your brother?

A. Some was money loaned and some of it was repairing and servicing his cars.

Q. What is your recollection with regard to the extent, the amount and extent of the servicing of cars?

A. I couldn't make a distinction between it.

Q. Now, Mr. Remmer, you were subpoenaed here by the prosecution at the outset of this case, were you not? [2562]      A. Yes.

Mr. Campbell: Objected to as immaterial.

The Court: The answer may stand.

Q. And you came to Carson City twice under direction of the prosecution of this case?

A. Yes.

Q. And then you were excused without being called, is that correct?      A. That is correct.

Mr. Gillen: I think that is all.

(Testimony of William Remmer.)

Cross-Examination

By Mr. Campbell:

Q. Now, Mr. Remmer, have you described all of the automobiles which you turned over to your brother in the period 1944 to 1946?

A. I think so, yes, sir.

Q. Now, you have book records, do you not, for those years? A. Yes, sir.

Q. And have you brought those records with you?

A. I have them in the hotel in Reno, yes, sir.

Q. And do those records set forth the details of the transactions which you have testified to on direct examination? A. Yes, sir.

Q. And do they also include the details of the repairs and servicing items which you say you advanced to your brother Elmer? [2563]

A. Yes, I believe they would; yes, I am certain.

Q. And in addition to that, would those books disclose the details and amounts of any sums of money which you may have personally advanced to him? A. No, sir.

Q. Those are company records?

A. Company records.

Q. And relate only to the automobile agency?

A. Relate only to the automobile agency.

Q. Now, did Elmer Remmer owe you anything as of January 1, 1944? A. Yes, sir.

Q. How much did he owe you then?

A. Oh, I don't know.

(Testimony of William Remmer.)

Q. Well, you say he owed you eight to ten thousand dollars at the end of 1946. What is your best recollection as to what he owed you in January, 1946?

A. I don't know—as of the first of January?

Q. Yes.

A. I could get the information. I am familiar with the information pertaining to this period because you told me to bring my records up when I came up for you and I have recollection, looking at my records, it would be fresh in my mind.

Q. But you don't have that in your mind?

A. I believe we are required to keep our records six years. [2564] No, I might not have it, Mr. Campbell, but it is possible we have it.

Q. (By Mr. Campbell): I am going to ask then, Mr. Remmer, with the exception of one matter, I am going to ask the Court if further cross-examination may be deferred until tomorrow morning, at which time I will ask the witness to bring his records with him.

Mr. Gillen: May I say, your Honor, I think this is very unfair and I am going to ask your Honor to deny counsel's request, for this reason—Mr. Remmer is very anxious to get back to business; (2) he is an ill man and about to go for an operation—

The Court: I am compelled to grant the request.

Mr. Gillen: May I point something out?

The Court: You may, yes.

Mr. Gillen: All of these matters were taken up

(Testimony of William Remmer.)

with Mr. Remmer, were scrutinized when he appeared before the——

The Court: The Court has no knowledge of that.

Mr. Gillen: Well, I am telling you. Of course, I wouldn't lie—I am an officer of the court.

The Court: I am going to give counsel an opportunity to cross-examine if he wants to. Those records could be brought over from Reno easily.

Mr. Gillen: They were brought twice and they were scrutinized. [2565]

The Court: The ruling will stand.

Mr. Gillen: That is all right, I am going to be here any way, your Honor—it will not discommode me.

The Court: The ruling will stand.

Mr. Gillen: When do you want the man back—you might accommodate him somewhat?

Mr. Campbell: Possibly there is some way the records could be gotten down here——

Mr. Gillen: Are your records in Reno?

A. Yes.

The Court: If there is going to be any further inquiry about this, it could be very well made between counsel in the absence of the jury.

Mr. Gillen: I was going to say we might arrange——

The Court: Take it up with counsel privately. I do not want this record filled with immaterial matters.

Mr. Gillen: You are excused so far as the defense is concerned.

(Testimony of William Remmer.)

The Court: When do you want him back?

Mr. Campbell: Whenever the records are available.

Mr. Gillen: If we could have a five minute recess, we might find out if we have some people who are coming over who could bring them. That is what I was trying to convey to your Honor.

(Jury and alternate jurors admonished and recess taken [2566] at 2:00 o'clock.)

2:10 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**WILLIAM REMMER**

resumes the witness stand on further

**Cross-Examination**

By Mr. Campbell:

Mr. Campbell: Now, if your Honor please, during the recess I stated to counsel that I would go ahead with cross-examination of this witness and that counsel will bring down his records tomorrow and if those records are material, we will enter into stipulation regarding what they show.

Mr. Gillen: That is entirely agreeable.

Q. Now, Mr. Remmer, let us take the first car, the Dodge pick-up, which you say that you sold your brother for \$465, for which he did not pay

(Testimony of William Remmer.)

you, is that correct?      A. That is correct.

Q. And which you paid for yourself at the end of 1944?      A. That is correct.

Q. Now, in connection with that transaction, did you give him the pink slip or ownership certificate on that Dodge pick-up?      A. Yes, sir.

Q. And did you cause the ownership name to be changed on the State records?

A. You mean did I put a transfer through?

Q. Yes, sir. [2567]      A. Yes, sir.

Q. And in what name was that put through?

A. I believe it was put through in the name of Cal-Neva Lodge.

Q. And do you know whether or not your brother continued to have that car at the end of 1946?      A. No, sir, I don't.

Q. Now, do you know whether at the time that this Dodge pick-up—incidentally, a pick-up is a truck, is it not?

A. Yes, it is a light commercial vehicle.

Q. Do you know at that time whether or not your brother had other automobiles?      A. Yes.

Mr. Gillen: Objected to as incompetent, irrelevant and immaterial, not within the scope of direct examination. We just asked him about transactions between his brother and himself.

The Court: We will see what the answer to this question is.

Mr. Campbell: He said yes.

The Court: The answer may stand.

A. I don't know whether they belonged to him,

(Testimony of William Remmer.)

but I know he used them. I don't know whether he used them

Q. How many cars? A. Oh, I don't know.

Mr. Gillen: Just a moment, Mr. Remmer, please, I want [2568] to offer an objection.

A. Excuse me.

Mr. Gillen: The answer to that is in. I move it be stricken.

The Court: It may go out.

Mr. Gillen: Now, I offer the objection it is incompetent, irrelevant and immaterial and not within the scope of direct examination, therefore improper cross-examination.

The Court: Objection overruled. The answer may be reinstated.

Q. During this period of time, 1944 to 1946, when you say you were doing repair work for which your brother had not paid you, but for which he owed you, was that on cars other than the Dodge pick-up truck and the Pontiac sedans which you sold to him?

A. I don't believe I ever saw the Dodge pick-up truck after it left my place of business. The Pontiacs would come down for service.

Q. Were other cars brought in for service by your brother? A. There might have, yes.

Q. Was that during 1945, 1946, and 1946.

A. Yes, he might have sent in one or two cars, I don't know.

Q. Do you recall the makes of the cars?

A. Yes, I do. I recall one he had, it seems to me



(Testimony of William Remmer.)

a 1941 Chrysler station wagon. Whether it was his or not, I don't [2569] know, but I did some work on it.

Q. That was included in these repair bills?

A. Yes, sir.

Q. Do you recall any other cars?

A. No. During that particular time?

Q. During that particular time I am talking about. A. No.

Q. Now, you say the first Pontiac you sold him was in 1946, is that correct?

A. That is pertaining to the time you are asking about?

Q. Yes. A. Yes, sir.

Q. Well, had you sold him any Pontiac before 1946? A. Yes, sir.

Q. When?

A. I sold him a Pontiac in, I believe, 1941.

Q. Do you know whether or not he still had that Pontiac as of January 1, 1944?

Mr. Gillen: Of course, I think we are getting pretty far removed from the scope of direct examination.

The Court: This might be a preliminary matter. Is it some preliminary matter?

Mr. Campbell: Yes, I am going into the disposition, if he gives the disposition.

The Court: Well, you may answer the [2570] question.

A. I don't know whether he had it or not, I don't know.

(Testimony of William Remmer.)

Q. At any rate, getting to 1946, the first Pontiac that you sold him, which you stated was sold to him for approximately \$1600?

A. That is correct, yes, sir.

Q. And did he pay any money down or turn in anything on that Pontiac?

A. Mr. Campbell, I don't know whether it was the first or second, but on one car there was a trade, and to my recollection the trade—it was on one of the two Pontiacs there was a trade, and to my recollection the trade represented \$1050.

Q. Now, do you recall, Mr. Remmer, an occasion on or about January 5, 1951, when you made a statement, question and answer statement, at 100 McAllister Street Building in San Francisco?

A. Yes, sir.

Q. And there were present on that occasion, were there not, in addition to yourself, your attorney, Theodore Golden, as well as special agents Whiteside and Weaver and a stenographer, do you recall that?

A. I recall my attorney was with me. There were some government men, one of them is sitting over there.

Q. You are referring to Mr. Weaver sitting here?

A. That gentleman, yes.

Mr. Gillen: May the record show who he pointed to? [2571]

The Court: The record will show it is Mr. Weaver.

Mr. Gillen: While I am interrupting, I would

(Testimony of William Remmer.)

like to clear up one thing. Mr. Theodore Golden is an attorney practicing in Oakland, is no relation to my associate Mr. Golden. He is not related.

Mr. Campbell: He is not related, I understand.

Q. Were you subsequently, Mr. Remmer, shown a typewritten copy of the statement which you gave on that occasion?

A. You mean at the time?

Q. No, afterwards, a few days later.

A. I don't recall.

Q. Do you recall an agent coming to you and showing you the statement and you making certain corrections or changing of your answers?

A. Oh, yes, I do; yes, that is correct.

Mr. Campbell: May this document be marked 184 for identification?

Q. Mr. Remmer, was a copy of, or the original copy of that statement left with you?

A. I don't know, I don't remember, Mr. Campbell, whether it was or not. I am inclined to believe it was; I can't remember.

Q. All right. I am going to hand you this 184 for identification, and ask you to look it over, not only for the purpose of seeing if this is the statement which you gave at [2572] that time, but in the event it is that you examine it for the purpose of refreshing your recollection, if it needs refreshing, as to certain questions I am about to propound.

Mr. Gillen: I am going to move the last remark of counsel be stricken.

The Court: It may go out.

(Testimony of William Remmer.)

Mr. Gillen: There is nothing in this record——

The Court: I have granted the motion.

Mr. Gillen: I was going to go into another matter——

The Court: Well, there is nothing before the Court.

A. I think this is approximately.

Q. Now, Mr. Remmer, at the time you made that statement, did you have with you and before you the records of the automobile company to which you referred, reflecting the transactions with your brother and which you said are presently up in Reno?

A. Yes. Yes, invoices, I believe I had. I do not know what these records are that I have up in Reno. You required me to bring some records when you were there and they were in a rubber band and I put them in the desk and when I came up this time I just put them in my grip. I presume——

Q. At any rate, at the time you gave this statement on January 5, 1941, you had the records before you?      A. Yes.

Q. And I am going to direct your attention specifically to [2573] 4 of this document and ask you if this refreshes your recollection as to the date, the precise date, upon which you sold Elmer Remmer the Dodge pick-up?

Mr. Gillen: May I have the question?

The Court: Yes, sir.

(Question read.)

(Testimony of William Remmer.)

Mr. Gillen: Now I am going to object to the question upon the ground it is not proper cross-examination, because there is no evidence here to indicate his memory has to be refreshed. As your Honor will recall, I did not ask him for precise dates. There is nothing to refresh his recollection about. I asked him for the year 1944 he had a recollection of selling a car to his brother and he mentioned the Dodge pick-up, so it is not a matter of refreshing his recollection.

The Court: Objection will be overruled.

Q. Upon what date did you sell the Dodge pick-up?

A. The date here is July 31, 1944.

Q. Is that your best recollection?

A. Well, I had the records in front of me at the time, so I think that is correct.

Q. What was the selling price? A. \$465.

Q. I direct your attention to Exhibit 184 for identification and to the question and answer as to the selling price, and ask you if that refreshes your recollection as to the selling [2574] price?

A. I believe this is typographical error. This says \$456 and to my knowledge of 30 years in the business, I never sold an automobile for an odd dollar.

Q. So that your recollection is definite as to \$465?

A. I would say it would be \$465, and I believe that is a typographical error, that says \$456.

(Testimony of William Remmer.)

Q. Now do you recall in what month it was that you sold to him the Pontiac sedan?

A. No, sir, I don't.

Q. I am going to show you——

Mr. Gillen: In the interest of time, we will stipulate whatever date appears there, since he said the records were before him at that time, would be the date.

Q. All right; I direct your attention to the date April 30, 1946, is that the correct date?

A. Yes, sir.

Q. And I direct your attention to the total cost of \$1498.70?

A. That would be the correct amount, sir.

Q. And incidentally, there were odd dollars on that sale? A. That involves sales tax.

Q. And did you receive a deposit of \$100 at that time? A. Yes, sir.

Q. And was there any trade-in on that car?

A. On that particular car I would have to see the record; I [2575] don't know.

Q. Well, let me show you here at the bottom of page 4, question and answer, and ask you if that refreshes your recollection there was any trade-in on that car?

A. No, there was no trade-in.

Q. Now at the time you sold that car to him, or subsequently and until December 31, 1946, did you receive anything in addition to that \$100 from him on account of that sale? A. No, sir.

Q. At the time you made the sale, on or about

(Testimony of William Remmer.)

April 30, 1946, did you deliver the pink slip or ownership certificate of that car to him?

A. I presume so, yes, sir.

Q. And do you recall in what name that certificate was issued?

A. I believe it was issued in the name of Helen Remmer.

Q. And that is the wife of Elmer Remmer?

A. Yes, sir.

Q. Incidentally, is she occasionally known also as Libby Remmer?

A. I have only known her as Helen.

Q. Now according to this statement, a second car was sold on June 21, 1946, would that be correct?

A. Yes, sir.

Q. And the price was \$1716.91, would that be correct?

A. Yes, sir.

Q. Against which there was a trade-in of \$1300, leaving a [2576] balance of \$416.91?

A. Yes, sir.

Q. Would that be correct?

A. That would be correct, sir.

Q. Do you recall what car it was that was traded in on that Pontiac?

A. No, I don't; I don't know. He had a car stolen and the insurance company replaced it and whether it was that car that was stolen—I can't recall, no, sir.

Q. Do you recall whether or not the trade-in on June 21, 1946, was the same Pontiac which you sold him on April 30, 1946?

A. No, it wouldn't be the same Pontiac; no, sir.

(Testimony of William Remmer.)

Q. The trade-in would not be the same one that you sold him? A. No.

Q. And you don't recall the make of the car that was traded in?

A. No, I have a slight recollection it was a Buick automobile, but I wouldn't want to testify it was.

Q. Would these records Mr. Gillen will bring down help you?

A. No, they would just show the credit.

Q. Do you recall in whose name the trade-in was registered? A. The trade-in?

Q. Yes.

Mr. Gillen: You mean the new car?

Mr. Campbell: No, the one that was [2577] traded.

A. No, Mr. Campbell.

Q. Now at the time you delivered the new car, the second Pontiac, on June 21, 1946, did you deliver the pink slip to him on that?

A. Not at the time of delivery, because we have a different title law in California. The pink certificate is not issued by the dealer, it is issued by the State.

Q. You sent the certificate papers to the State?

A. We are required by law to apply for a license within 24 hours and they in turn would send the title.

Q. Did you cause the title certificate to that car to be delivered to your brother? A. Yes.



(Testimony of William Remmer.)

Q. And in what name was that car recorded or registered?

A. I don't know; I can't remember.

Q. Do you recall whether or not it was registered in his name?

A. I presume it was, but I can't remember.

Q. Do you know whether or not Mr. Remmer still had both of these Pontiacs as of December 31, 1946?

A. Not of my own knowledge; no, sir.

Q. You don't know one way or the other?

A. No, sir.

Q. Now according to your direct testimony, you also, during the years 1944 to 1946, loaned money to your brother, is that correct? [2578]

A. That's correct.

Q. And what was the amount which you lent to him?

A. Well, minor deductions; I don't know the amount of money in cash.

Q. You say amount of money in cash?

A. By check, which is the same as cash I advanced, I don't know; no, I don't know.

Q. Did you keep any record of it at the time?

A. No, sir. I kept a mental record; I know how much money he owes me, but I took it in total amount. You are asking what represents automobiles, etc., repairs, etc.; I don't know how to break it down.

Q. You stated, however, that the amount had reached between eight and ten thousand dollars, in-

(Testimony of William Remmer.)

cluding automobiles and repairs, by the end of 1946? A. Approximately so, yes.

Q. I believe you stated that you have not kept your checks for this long period of time?

A. That is correct.

Q. Do you at this time have any recollection as to the balances owed by him to you as of December 31, 1943, 1944, 1945 or 1946?

A. You mean as to this transaction?

Q. Yes, the end of the year balances?

A. No. [2579]

Q. Now during the years 1944 to 1946, when you were lending him this money, would he pay you back the amounts, or part of the amounts, from time to time?

A. I got some money back, yes, sir. If he was in a position, he would pay it back; if he wasn't, he didn't.

Q. So there was money going both ways—you were loaning him money and from time to time he would give you back money, is that correct?

A. Yes.

Q. Now do you recall what bank account you drew the checks on, the money which you loaned to your brother?

A. It might have been one of ten.

Q. What is your best recollection?

A. It might have been the American Trust Company, it might have been the Anglo California, it might have been the Bank of America, it might

(Testimony of William Remmer.)

have been the Central Bank; I have accounts in those banks.

Q. Personal accounts as distinguished from firm accounts? A. Yes, all personal.

Q. Now at the time you gave this statement on January 5, 1951, were these matters fresher in your mind than they are at this time?

Mr. Gillen: Of course, that is very objectionable question.

Mr. Campbell: All right. I withdraw the question. [2580]

Q. Now do you recall, Mr. Remmer, if you were asked these questions—

Mr. Gillen: Is counsel now referring to the statement of January, 1951? If he is, he is doing it improperly. The man should be shown his statement.

The Court: I think he ought to call his attention particularly.

Mr. Gillen: It is 11-page statement, your Honor, it would be pretty hard—

Q. I am going to call your attention to page 6 of Exhibit 184 for identification, and to the questions and answers set forth on that page, and ask you if you will read those over.

Mr. Gillen: Well, now, may it please the Court, I should be happy to have the Court look at these questions and answers. There are quite a number on this page and your Honor will recognize immediately that they refer to matters beyond the scope of direct examination and to early years that counsel objected to being asked about.

(Testimony of William Remmer.)

The Court: He has merely requested the witness to read over to himself those questions and answers.

Mr. Gillen: Yes, all right.

Q. Have you read those over? A. Yes, sir.

Q. Now I also wish to call to your attention and ask you if you will read preceding that, particularly the second question [2581] and answer on page 4.

Mr. Gillen: May I respectfully urge at this time that the question and answer with regard to whether or not the witness read the questions and answers on page 6 of his statement be stricken?

The Court: If there was a question of that kind, it may be stricken.

Mr. Gillen: The question was, would he read his questions and answers on page 6 and did he read them. I am asking that the question and answer be stricken on the ground——

Mr. Campbell: I want to ascertain if he completed reading that portion because I wanted to read some other portion, also preliminary to any other question.

The Court: It may stand.

Mr. Gillen: I do not want counsel to create the impression before the jury it is to refresh Mr. Remmer's recollection on page 6, which is one of the reasons to ask a man to read a statement he gave at a previous time, or that he is attempting to impeach his own testimony, because page 6 refers to another period of time altogether, refers to a period of time subsequent to 1946.

The Court: He is merely requesting the witness

(Testimony of William Remmer.)

to read to himself certain parts in that exhibit. I do not believe the jury should draw an inference of any kind from that question. [2582]

Mr. Gillen: There are only two ways of doing that, as your Honor knows, and neither of those ways are apparent in this particular question.

The Court: Of course, I don't know what the object is, but I can't see any harm in asking him to read something.

Q. Now isn't it a fact, Mr. Remmer, that on January 5, 1951, at 100 McAllister Street Building, in the presence of Theodore Golden, your attorney, Special Agents Whiteside and Weaver, and a stenographer, you were asked the following questions and gave the following answers, relative to the years 1943 to 1946, inclusive—

Mr. Gillen: Now may I ask counsel to show me the particular questions, so I may be in position to offer an intelligent objection? I think there is no objection to that. We will stipulate that he gave these answers to these questions and they may be read.

Mr. Campbell: All right, so stipulated.

Mr. Gillen: Up to that line.

Mr. Campbell: (Reads from Exhibit 184.)

“Q. Has he ever borrowed any money from you? A. Yes, sir.”

The Court: Point out the questions so Mr. Remmer can follow you.

Mr. Campbell: This is page 5. This, of course,

(Testimony of William Remmer.)

refers [2583] to Elmer Remmer, is that correct, Mr. Gillen?

Mr. Gillen: Oh, sure.

Mr. Campbell: Reading from page 5 of Exhibit 184 for identification:

"Q. Has he borrowed from you frequently?

"A. At various times.

"Q. Do you have any record of the amounts you advanced to him? A. Some.

"Q. What record do you have?

"A. Well I have a record of his car transactions, repair work that I did for him.

"Q. On automobiles? A. Yes, sir.

"Q. None of which he paid for?

"A. That is correct. Some repairs were paid for but were paid for by insurance companies, but I never was paid by him for any.

"Q. In addition to that you also advanced sums of money to him? A. During these years?

"Q. Yes. A. I can not remember.

"Q. How did you advance these monies to him, in cash or by check? [2584]

"A. No, mostly by check.

"Q. Then that you would be able to ascertain from your checking account?

"A. Not for these years, no, sir.

"Q. Don't you have your checks?

"A. I don't keep my checks that long.

"Q. What amounts did you advance to him?

"A. I can't tell you, sir.

"Q. Was it more or less than a thousand dol-

(Testimony of William Remmer.)

lars? A. I can't even answer that, sir.

"Q. You mean you do not know whether or not you gave him \$1000 altogether?

"A. I have never given him any cash. You mean during these years?

"Q. Yes.

"A. No, I could not—I would not want to make a statement one way or the other.

"Q. You can not even approximate the amount?

"A. I know how much he owes me but I don't know when the debt was incurred."

That is all.

#### Redirect Examination

By Mr. Gillen:

Q. Now, Mr. Remmer, calling your attention to the same exhibit 184 for identification, I will ask you if you also gave the next two answers to the next two questions on that same page 6? [2585]

Mr. Campbell: Just a minute. I am going to suggest at this time the entire document go into evidence.

Mr. Gillen: It is part of the same statement. It is by way of explanation.

The Court: Have you any objection to this question?

Mr. Campbell: I think it should then include the next four questions and answers.

The Court: You may answer this question.

Mr. Gillen: Counsel suggested the next four questions?

(Testimony of William Remmer.)

Mr. Campbell: Yes.

Mr. Gillen: We suggest enlarging that to the next nine questions, including counsel's four, which will give a complete explanation, I believe, of Mr. Remmer's recollection.

Mr. Campbell: I will offer the entire document in evidence.

Mr. Gillen: Well, there are other matters, I think, that are immaterial.

The Court: I think we had better go along.

Mr. Gillen: I wonder will Mr. Campbell stipulate, to save time, that we may read the next nine questions and answers?

Mr. Campbell: Yes.

Mr. Gillen: With the Court's permission and counsel's stipulation, I shall read those.

The Court: Yes. [2586]

Mr. Gillen: And with the Court's permission, I will pick up the last question and answer Mr. Campbell read so the jury will be assisted. Mr. Remmer, I am going to read the last question and answer Mr. Campbell read on page 6 and the next succeeding questions and answers.

Mr. Campbell: I will stipulate he gave those answers to those questions.

Mr. Gillen: I accept the stipulation.

Mr. Gillen: (Reads.)

"Q. You mean you do not know whether or not you gave him \$1000 altogether?

"A. I have never given him any cash. You mean during these years?



(Testimony of William Remmer.)

"Q. Yes.

"A. No, I could not—I would not want to make a statement one way or the other.

"You can not even approximate the amount?

"A. I know how much he owes me but I don't know when the debt was incurred.

"Q. How much does he owe you?

"A. About \$26,000.00.

"Q. Does that include the sums for these automobile purchases and repair charges, and in addition advances by check? A. Yes, sir.

"Q. When was the bulk of that money advanced to [2587] him by check?

"A. Some last year and some the year before.

"Q. Would it be in— A. 1950—1949.

"Q. You must have your cancelled checks for those two years so you could determine exactly what your advances were in those years?

"A. By check \$15,000.00.

"Q. In 1949 and 1950? A. That is correct.

"Q. The balance of approximately \$10,000.00 applies to prior years?

"A. Some car transactions was from in 1947 and including 1947 to the present time.

"Q. About how much of that \$10,000.00 would you say arose from car transactions up to the present time—would it amount to \$5000.00?

"A. Approximately I suppose. We could go through the process of figuring, but in approximately round figures."

Q. Now, Mr. Remmer, do you have in mind what

(Testimony of William Remmer.)

was the amount of your brother's obligation to you at the beginning of the year 1944?

A. At the beginning of the year 1944?

Q. Yes. [2588] A. Very slightly.

Q. Do you have any idea now; if you do all right, if you do not, all right.

A. Oh, it might be \$300.

Mr. Gillen: I think that is all, thank you.

Recross-Examination

By Mr. Campbell:

Q. Do you have any idea what it was at any other date in the period January 1, 1944, to December 31, 1946? A. What it was——

Q. Yes, at any date during that period.

A. In December of 1946 it was about ten thousand dollars.

Q. Now have you refreshed your recollection from some source since you gave this statement to which your attention has been called? A. Yes.

Q. From what source.

A. Oh, I kept a notebook on it.

Q. Do you have that notebook?

A. No, sir.

Q. Where is that notebook?

A. I don't know.

Q. When did you last see that notebook?

A. Shortly after I appeared here.

Q. Shortly after you gave this statement?

A. Yes, sir. [2589]

(Testimony of William Remmer.)

Q. When did you last see it prior to the time you gave this statement?

A. Maybe a year or two.

Q. Didn't you tell the government man that you had no record of those personal advances?

A. It isn't a record, Mr. Campbell; it isn't a record.

Q. Is it a notebook in which you jotted down the amount which——

A. It isn't a complete record.

Q. Does it have entries indicating eight to ten thousand dollars as of December 31, 1946?

A. I couldn't tell you. The purpose of the notebook——

Mr. Gillen: May it please the Court, we object, first as argumentative and assuming something not in evidence. The witness testified in this statement that when various amounts were incurred he did not have a record, he had a recollection in his mind of the money owed at that time, and I presume various other times, too. He said it wasn't a complete record, he didn't keep each amount owed completely, but he knew the general amount.

The Court: Read the question.

(Question read.)

The Court: You may answer the question.

A. It showed the total amount. I can explain if I am permitted to. The only purpose of that was that my wife and I have separate holdings and for tax purposes my wife had her [2590] holding prior to our marriage and I had my own individual hold-

(Testimony of William Remmer.)

ings, and we were allowed a percentage break to bring her community interests up to the point prior to the law of equal division. That was the only purpose of that, was for my tax accountants.

Q. What I am getting at, did you make entries in that?      A. As I gave him money?

Q. Yes.      A. No.

Q. When did you make the entries?

A. I just made a total of what he owed me.

Q. When?

A. When I discussed it with my tax accountants. When I was permitted to take an equal division in her community property interest and they were trying to get me to establish my own worth prior to marriage.

Q. When did you make the entries?

A. It wasn't a single entry—it was entry of all my assets.

Q. When did you make entry in that book with relation to what Elmer owed you on December 31, 1946?

A. I don't know. It isn't a ledger, just a memorandum, trying to establish my own net worth.

Q. Did that have date as of December 31, 1946?

A. I don't know—it has no date, no. I know it came up after this and I tried to establish my own amount of money I [2591] had accumulated or had prior to my marriage.

Q. Was that after January 5, 1951, that you set that notebook up?

A. Was it after January 5th—oh, no.

(Testimony of William Remmer.)

Q. When did you set that notebook up?

A. Oh, it was either the year 1946 or 1947, because it was prior to the passing of the law of 50 per cent community property law. So it is a date prior to that. I don't know the date. It was just a memorandum.

Q. Have you destroyed that book?

A. I presume it has been; presume, because it had no value.

Q. When did you destroy it?

A. I don't know it was destroyed.

Mr. Gillen: That is assuming something not in evidence.

The Court: Objection sustained.

A. It would be so much rubbish around the house and I just presume it was destroyed. I didn't keep any permanent record.

Q. Did you have that record in mind when you told the agents at the time of this statement?

A. No, sir.

Q. You wouldn't even assume to say whether it was more or less than a thousand dollars Elmer owed you?

A. I believe when I answered that question whether it was more or less than a thousand dollars, I had the thought in mind that he was trying to arrive at how much money I had [2592] given him at single time and as I read that question, that was my answer.

Q. Did you have that notebook in mind at the time you gave that answer?      A. No, sir.

(Testimony of William Remmer.)

Q. Did you, during the course of this statement, or at any time, disclose the existence of any such book to the government agents? A. No, sir.

Q. Now, Mr. Remmer, if you were advised in 1948 was the first year for which a husband and wife could split their income on their returns, regardless of community property, would that assist you in fixing the date at which you made this entry in the notebook?

A. It would be after that, because I wanted to take advantage of that law.

Q. It was after that law came into force?

A. Wait just a minute—no—January—I didn't get that date that the law came into force.

Q. If you were advised 1948 was the first year for which such returns could be filed?

A. Then it would have to be prior to that.

Q. Prior to the enactment of the law?

A. Yes, because the law automatically accomplished what I am trying to accomplish. [2593]

Q. Now did you ever show that book to any one?

A. I do not believe so, no, because the book wouldn't mean anything.

Q. Did you show it any accountant or attorney?

A. No, I may have gone over it with my wife, but that would be all.

Q. Other than your wife, you can't think of any one you may have shown that to? A. No.

Mr. Campbell: I think that is all.

Mr. Gillen: I think that is all.

(Witness excused.)

(Jury and alternate jurors admonished and short recess taken at 3:00 p.m.)

3:15 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**ELMER RONALD VACCHINA**

a witness on behalf of the defendant, being duly sworn, testified as follows:

**Direct Examination**

By Mr. Gillen:

Q. Will you please state your full name?

A. Elmer Ronald Vacchina.

Q. Where do you reside?

A. 865 Wilkinson Avenue, Reno.

Q. What is your business or occupation? [2594]

A. Assistant Trust Officer, First National Bank of Nevada.

Q. How long have you held such position?

A. Two months.

Q. Have you been with the bank for some time?

A. Four and one-half years.

Q. Now, Mr. Vacchina, were you requested to bring here certain records from the Trust Department of the First National Bank of Nevada, relative to a transaction between Elmer Remmer and a man known by the name of J. B. Scarlett, who is also, I believe, known by the name of Jack Sullivan?

A. Yes, sir.

(Testimony of Elmer Ronald Vacchina.)

Q. Do you have those records with you?

A. Yes, I have.

Q. Do you have the original records of the bank?      A. All but one, sir.

Q. And that one that is missing is what?

A. It was a check and it is not filed in the escrow folder and was inadvertently left behind.

Q. That can be produced?

A. Yes, it can be.

Q. Did you also bring with you photostatic copies of the original records?      A. Yes, sir.

Q. May I see the originals and photostats which you brought with you? By the way, the one document that you were [2595] requested to bring, which you say was inadvertently left behind, the original document, do you have the photostat of that document, the check?      A. Yes, I do.

Mr. Campbell: We have no objection to the photostat.

Mr. Gillen: May I see the photostat? When counsel has finished looking at the original document, I am going to ask if it may be stipulated that the three photostatic copies I hold in my hand may be offered in lieu of the originals, so the gentleman may take his original records back to the bank.

Mr. Campbell: We have no objection to the use of photostatic copies. We will have certain objections to the documents at some time.

Mr. Gillen: I will offer these two documents as defendant's exhibit next for evidence. The first document would be the assignment, D-1; the second



(Testimony of Elmer Ronald Vacchina.)

document will be final escrow receipt release, E-1, and the third document I will offer for identification will be the face and reverse side of a cashier's check of date of March 2, 1949.

The Clerk: F-1.

Mr. Gillen: And may I ask counsel, through your Honor, may I ask he stipulate that these three documents represent true photostatic replicas of the original documents reflecting this particular transaction, kept in the ordinary course of business of the First National Bank of Nevada? [2596]

Mr. Campbell: If you state that as the fact, I will stipulate.

Mr. Gillen: Well, is that the fact, Mr. Vacchina?

A. That is the fact.

Mr. Gillen: In the face of the stipulation and in the face of the answer of the witness, I will at this time offer those three documents in evidence on behalf of the defendant with the numbers and designations they now bear.

Mr. Campbell: To which we object at this time, until further foundation is laid as to the materiality. The documents relate to some transaction taking place—well, one document is dated October 21, 1948, and the other the 2nd of March, 1949, and we make the objection at this time that no proper foundation has been laid for their admission, on the grounds that their materiality has not yet appeared.

The Court: Can you make a little further showing on that matter?

Mr. Gillen: Well, the third document counsel

(Testimony of Elmer Ronald Vacchina.)

did not mention and that is the final receipt and release. The other two documents go as one transaction.

Mr. Campbell: They all relate to the same thing. I refer to the documents as bearing dated respectively October 21, 1948, and March 2, 1949. They all relate to the same transaction. My objection is that this is a transaction at a time long subsequent to the period here in question, and until the [2597] foundation is laid it relates here to some transaction within the period, I submit that they are immaterial.

The Court: May I inquire if these exhibits have to do with the material which was referred to concerning the same gentleman, Mr. Scarlett?

Mr. Gillen: Yes, your Honor.

Mr. Campbell: We do not know, your Honor, until the evidence is placed in here.

Mr. Gillen: It is referring to repayment of loan made in 1946.

Mr. Campbell: May I ask a question on voir dire?

The Court: Yes.

Q. (By Mr. Campbell): Mr. Vacchina, do you have any personal knowledge of the transaction to which these papers relate?

A. You mean to what went before?

Q. Yes.

A. No, we merely received the assignment from Mr. Remmer and recorded it.

(Testimony of Elmer Ronald Vacchina.)

Q. And you received this assignment on or about October 21, 1948?

A. Our escrow is active during that period and I assume it was about that time.

Q. Do you have any knowledge of the transaction to which this assignment relates?

A. Not personally. [2598]

Mr. Campbell: I make this objection until further foundation is laid.

Mr. Gillen: I say this in the interest of time, these documents, may it please the Court, relate to the transactions in which there is already testimony in evidence before the Court and will be immediately connected up by a witness who will next be called, in the person of Mr. Woodburn, attorney.

Mr. Campbell: If it is connected up, I will have no objection at that time to it being put in evidence, but I do not think we should have it before.

The Court: We will postpone it until later.

Mr. Gillen: Very well, I will withdraw this gentleman on the witness stand, but in the event I encounter other technical obstacles, I will ask that he remain in the court room, in case we have to use him further.

The Court: Very well.

Mr. Gillen: I presume counsel is refraining from cross-examination.

Mr. Campbell: Well, I have no cross-examination up to this point.

WILLIAM WOODBURN

a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination

By Mr. Gillen:

Q. Will you state your full name, please?

A. William Woodburn. [2599]

Q. Where do you reside?

A. In Reno, Nevada, 3 Newlands Circle.

Q. What is your business or profession?

A. I am a lawyer.

Q. How long have you been such in the State of Nevada?      A. Well, I was admitted in 1907.

Q. Mr. Woodburn, have you ever held any official positions in connection with your professional calling?      A. Yes.

Q. Will you relate what those positions were?

A. Well—

Mr. Campbell: I fail to see the materiality.

The Court: You may answer the question.

A. I was District Attorney of Washoe County for three terms, and then I was United States Attorney in this Court for eight years, and those are the only official positions I have ever held. I have held important positions in bar associations.

Q. Professional honorary positions; is that correct?      A. Yes.

Q. Now, Mr. Woodburn, do you maintain a law firm, or are you a member of a law firm in Reno, Nevada?      A. Yes.

Q. What is the name of that firm, please?

(Testimony of William Woodburn.)

A. Well, it is at present Woodburn, Forman and Woodburn. The second Woodburn is my son. [2600]

Q. Now back in the year 1946 what was the name of the firm?

A. It was then Thatcher, Woodburn and Forman. George B. Thatcher was the first name.

Q. Now Mr. George B. Thatcher, your former partner, is now deceased? A. That is right.

Q. And in addition to your own son being a member of the firm, there was another member of the firm in the person of John P. Thatcher, the son of your partner; is that correct?

A. That's right.

Q. Now, Mr. Woodburn, were you acquainted, during his lifetime, with a man by the name of J. B. Scarlett, also known as Jack Sullivan?

A. Yes.

Q. Were you his attorney? I mean, did you represent him on occasions or counsel him on occasions?

A. Yes, he consulted me on a number of legal matters.

Q. And are you acquainted with the defendant in this case, Elmer Remmer?

A. Yes, I have known Mr. Remmer for some years.

Q. Have you, or has your firm, served as attorney and counsellor for Elmer Remmer on occasions?

A. Yes, in one or two matters.

Q. And one of those matters was with relation to a civil liability in connection with his income tax returns; [2601] is that correct?

(Testimony of William Woodburn.)

A. That is correct.

Q. Now are you acquainted with Mr. William Graham and James McKay?      A. Yes.

Q. And did your firm have anything to do with the matter of the transfer of title or the sale of the establishment or resort known as Cal-Neva Lodge in Nevada?      A. We did.

Q. Did your firm facilitate the sale of the interests of William Graham and James McKay to the defendant in this case, Elmer Remmer, in the year 1946?      A. That's correct.

Q. Now do you have any recollection, in connection with the transfer or sale of the interests of McKay and Graham to Mr. Remmer in the year 1946, of the necessity of those three persons advancing some money to the corporation for the outstanding obligations to the corporation on their part?

Mr. Campbell: That calls for his conclusion.

Mr. Gillen: It calls for his memory.

The Court: You may answer.

A. That is my recollection.

Q. That there were some accounts that had to be paid off to the Cal-Neva corporation?

A. For Cal-Neva debts. Is that what you [2602] mean?

Q. I mean debts from McKay, Graham and Remmer to the Cal-Neva corporation?

A. That's right.

Q. Was it brought to your attention at that time that Elmer Remmer had incurred an obligation in

(Testimony of William Woodburn.)

the sum of 25 thousand dollars to J. B. Scarlett, your client, for the purpose of assisting Elmer Remmer in cleaning up his account in the Cal-Neva corporation?

Mr. Campbell: Objected to as leading and suggestive, obviously calling for hearsay, and that it is incompetent.

The Court: The objection will be sustained.

Q. Let me ask you this—did you have any conversation in the year 1946 at about the time that Cal-Neva interests of McKay and Graham were being transferred to Mr. Remmer, with your client, Mr. J. B. Scarlett? A. Yes.

Mr. Campbell: Objected to as immaterial and incompetent.

The Court: The answer may stand.

Q. Your answer is yes, you did have a conversation? A. I did.

Q. As a result of that conversation, Mr. Woodburn, did you, two years later, prepare any document in the form of an assignment acknowledging an obligation from Elmer Remmer to J. B. Scarlett, also known as Jack Sullivan? [2603]

Mr. Campbell: I am going to again object as leading and suggestive.

The Court: Objection sustained.

Q. Well, let me ask you this—did you ever prepare an assignment from Elmer Remmer to the benefit of J. B. Scarlett?

Mr. Campbell: Same objection.

Mr. Gillen: I do not think that is improper.

(Testimony of William Woodburn.)

The Court: Objection overruled. You may answer the question.

A. Yes.

Q. And did the assignment that you prepared refer to the matter contained in the conversation that you had with your client, Mr. Scarlett, in 1946?

Mr. Campbell: That is objected to, if the Court please, as incompetent. It is an attempt to produce a hearsay conversation and contents of the conversation by indirection.

Mr. Gillen: No, may it please your Honor, it is asking if a document he prepared as a lawyer at a certain time related to a conversation with Mr. Scarlett at a prior time, related to that same matter.

The Court: You may answer the question.

(Question read.)

A. It did.

Q. I am going to show you, Mr. Woodburn, a photostatic copy which has been stipulated to be a true replica of the [2604] original document kept in the ordinary course of business of the First National Bank of Nevada, and I will ask you whether or not that is the assignment that you prepared for Elmer Remmer and your client, J. B. Scarlett?

A. I am certain it is.

Mr. Gillen: I will offer that in evidence.

A. Pardon me—that was in October, 1948. I recall preparing the assignment.

Q. Do you recall in October, 1948, there was any other transactions afoot or any other deal afoot for the sale of Cal-Neva by Mr. Remmer?



(Testimony of William Woodburn.)

A. That is correct.

Q. And do you recall to whom Mr. Remmer was selling his interest to?

A. Yes, to the Adler interests.

Mr. Gillen: I offer the document in evidence.

Mr. Campbell: Objected to as no proper foundation, no materiality shown.

The Court: Objection sustained.

Q. Do you recall what the nature of the assignment was which you prepared for Mr. Scarlett?

Mr. Campbell: Objected to on the grounds the document speaks for itself.

The Court: Objection sustained.

Q. What was the purpose in preparing the document for [2605] Mr. Remmer and Mr. Scarlett?

Mr. Campbell: Objected to as incompetent and calling for hearsay.

Mr. Gillen: It is not calling for hearsay at all.

The Court: If the answer is intended to bring out the substance of the conversation with Mr. Scarlett, it is hearsay. Objection sustained.

Mr. Gillen: No, it is not for that purpose at all, may it please the Court. I am asking a lawyer who prepared the document what was the purpose of the document he prepared.

The Court: It was prepared partly as result of conversation with Mr. Scarlett.

Mr. Gillen: He testified, your Honor, it related to conversation with Mr. Scarlett and the transaction referred to in the conversation with Mr. Scarlett.

(Testimony of William Woodburn.)

The Court: Let us have the question.

(Question read.)

Mr. Campbell: I submit, there is no ambiguity in the document itself which requires explanation.

The Court: That is not the question.

Mr. Campbell: The question is what was the purpose. The document speaks for itself unless there is some ambiguity.

The Court: Objection sustained.

Mr. Gillen: Counsel is saying there is no ambiguity and calling for its production at the same time. That is a [2606] highly technical ground.

The Court: The question I am interested in before the Court was in regard to the purpose of preparing that document, and the document was obviously in part the result of conversation with Mr. Scarlett.

Q. All right. Mr. Woodburn, when you prepared this document, did Mr. Remmer sign that document?

A. He did.

Q. And is that his signature upon that document? A. So far as I know, he did.

Q. And what did you do with that document after it was executed by Mr. Remmer?

A. I handed it to the Trust Department of the First National Bank of Nevada.

Q. And directing your attention now—I will leave that document in your hands for a moment—to defendant's Exhibit F-1 for identification, that is the check, cashier's check, I will ask you if you

(Testimony of William Woodburn.)

will look at this exhibit, which has been stipulated is a true picture of the cashier's check issued by the First National Bank of Nevada, and tell us whether or not you recognize that instrument as ever having come to your attention in your professional capacity?

A. Well, of course, I can't be absolutely certain, but I will say this, that after the assignment was delivered to the Trust Department of the First National Bank, that one of the officers [2607] of the Trust Department handed me at or about this time the cashier's check of the First National Bank of Nevada in favor of J. B. Scarlett in the sum of 25 thousand dollars, which was the identical amount of the assignment of Remmer to the account of Sullivan was to the bank.

Q. Do you know from what funds that assignment of 25 thousand dollars was to be taken?

Mr. Campbell: Objected to—the record is the best evidence. The record is here, I believe.

The Court: If the record is here, it is the best evidence.

Mr. Campbell: If it will facilitate, I will stipulate the check which he holds in his hand was paid from funds deposited in escrow No. 1541, which funds was deposited on or about December 31, 1948.

Mr. Gillen: We will accept that stipulation. Now will counsel stipulate also there was funds payable to an escrow in favor of Remmer from Adler for the sale of Cal-Neva?

Mr. Campbell: Without stipulating to the ma-

(Testimony of William Woodburn.)

teriality of the transaction, which I wish to object to these documents, I will agree that that was the source of the funds.

Mr. Gillen: Now we might crystallize it in a form the jury may better follow, because it has been chopped up here. Counsel will stipulate that an assignment was made in favor of Scarlett by Remmer for the payment to Scarlett out of [2608] the escrow funds which should be derived from the sale of Cal-Neva and money paid by Adler to the account of Remmer, the sum of 25 thousand dollars; that as a result of that assignment being deposited, Mr. Woodburn, at a later date received the cashier's check which is defendant's Exhibit F-1, and I do not know whether he said this or not, but I believe turned it over to his client, Mr. Scarlett.

Mr. Campbell: When the transaction is linked up to the period set forth in the indictment, I will enter into such stipulation.

Mr. Gillen: Then counsel declines to stipulate. Then we will struggle along in our own way.

Q. Mr. Woodburn, I refer to photostat which is designated as defendant's E-1 for identification, which I will identify by the heading of "Final Escrow Receipt and Release," and which has been identified and stipulated to be a true picture of an official record kept in the ordinary course of business of the Nevada First National Bank, and I will ask you whether or not, at the time you received the cashier's check, which you hold in your hand, defendant's Exhibit F-1, that you had your client,

(Testimony of William Woodburn.)

Mr. Scarlett, sign that release and receipt for the First National Bank of Nevada?      A. I did.

Q. And you recognize your former client's signature, J. B. Scarlett? [2609]

A. That is correct. I remember particularly for the reason that the 25 thousand dollar cashier's check was handed to me by an officer of the Trust Department and I called Mr. Sullivan, whose true name was James Scarlett—

Mr. Campbell: I am going to object, if the Court please, to the voluntary release by Mr. Woodburn of these comments. He answered the question.

The Court: Yes, the question has been answered.

Q. Very well. Following the receipt of that cashier's check, did you summon your client, Mr. Scarlett, to your office?

A. Well, I telephoned him and he was a little crippled at that time, walked with a cane, and he said he would appreciate it very much if I would bring it down to his office, and I did.

Q. And you went to his office with it?

A. Yes.

Q. And did you have with you also at that time the receipt release for Mr. Scarlett to sign so you might return it to the bank for their records?

A. Yes, I recall he started to sign his name like it appeared here, J. B. Sullivan, and got "Sull" and then wrote his true name of Scarlett. Sullivan was his business name.

Q. These matters all related to the transactions

(Testimony of William Woodburn.)

that were brought to your attention in the year 1946? A. That is correct.

Mr. Gillen: I make the offer. [2610]

Mr. Campbell: Objected to as no foundation laid for the materiality of these documents.

The Court: Read the question.

(Question read.)

Mr. Campbell: I did not get the question. I would have objected to the question if I got it, as being incompetent. I ask the answer be stricken.

The Court: The answer may be stricken.

Mr. Campbell: And I make my objection the question is incompetent.

The Court: What is there in the record to connect this transaction with the periods involved in this indictment?

Mr. Gillen: I believe we have some evidence given by young Mr. Woodburn at an earlier time here, I think we can show your Honor, with relation to the matter of the handling of repayment of debt incurred in 1946 by Mr. Remmer to Mr. Scarlett, which debt was repaid in 1949 following an assignment made in 1948, from the first money that accrued from the sale by Mr. Remmer to Mr. Adler of Cal-Neva Lodge, all of which was handled through the office of Mr. Woodburn and by Mr. Woodburn.

Mr. Campbell: I recall Mr. Woodburn's testimony. He stated that he knew nothing whatsoever about the transaction except 25 thousand dollars was paid out of the sale of Cal-Neva, and I do not believe the record—— [2611]

(Testimony of William Woodburn.)

Mr. Gillen: I believe I can correct counsel on that.

The Court: You may check it during the recess.

Mr. Gillen: Mr. Woodburn, Jr., testified here as a witness for the prosecution and he related the instance of the repayment of the debt of 25 thousand dollars by Mr. Remmer to Mr. Scarlett through his law firm's office, and his testimony was recollection concerning the preparation of papers, etc., by his office and by his father, but he did not recall or have information on the date of the incurring of the debt by Mr. Remmer to Mr. Scarlett. Now Mr. Woodburn has testified that at a subsequent conversation in 1946, at a time when Mr. Remmer and Mr. McKay and Mr. Graham were paying personal obligations on their accounts to Cal-Neva, in preparation for the transfer of their interests, that as a result of the conversation at that time with his client, now deceased, whom we cannot produce, that he subsequently prepared certain documents and prepared the assignment.

The Court: Prepared the assignment—that is why I ruled the assignment is not admissible.

Mr. Gillen: Prepared the assignment——

The Court: That is why I ruled the assignment is not admissible.

Mr. Gillen: That he prepared the assignment and not only prepared the assignment, but he subsequently delivered the assignment to the bank, received from the bank at a later date [2612] the

(Testimony of William Woodburn.)

check and release, delivered them to his client, and returned the receipt and release to the bank showing the payment of this obligation. Now I think we have everything there, your Honor, for more than a substantial foundation. So there may be no question in anybody's mind, may I call your Honor's attention to page 1506 of the transcript in this case?

Mr. Campbell: May I suggest this be done out of the presence of the jury?

The Court: We will excuse the jury until tomorrow.

Mr. Gillen: I do not think this should be done out of the presence of the jury. The jury has already heard this.

The Court: We will excuse the jury until tomorrow morning at 10:00 o'clock.

(Jury and alternate jurors admonished and recess taken at 4:00 o'clock.) [2613]

Thursday, February 7, 1952—10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**JOHN P. THATCHER**

a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination

By Mr. Gillen:

Q. Will you state your full name?

A. John P. Thatcher.



(Testimony of John P. Thatcher.)

Q. And state your address?

A. 1310 Lander Street, Reno, Nevada.

Q. With whom do you reside there?

A. With my wife and children.

Q. What is your business or profession?

A. I am a lawyer.

Q. How long have you been such?

A. Twenty-one years.

Q. And that, of course, is in the State of Nevada? A. Yes.

Q. Were you formerly a member of the law firm of which your father was senior member?

A. Yes, Thatcher, Woodburn and Forman.

Q. And your father's name was what?

A. George B. Thatcher.

Q. And he is now deceased? [2614] When did he die? A. 1946.

Q. Are you acquainted with the defendant in this case, Elmer Remmer, who sits at the counsel table?

A. Yes, I have known him for some years.

Q. During the year 1948, in your professional capacity as a member of the firm of Thatcher, Woodburn and Forman, were you called upon to, and did you, do any work in connection with an income tax problem of Elmer F. Remmer?

Mr. Campbell: Objected to as immaterial, if the Court please, and not competent as to matters occurring in 1948.

The Court: Objection overruled.

Q. Do you wish the question read?

(Testimony of John P. Thatcher.)

A. The answer is yes.

Q. Are you acquainted with a man by the name of Harold Maundrell? A. Yes, I am.

Q. And during the month of March or the early part of April of 1948, in connection with the income tax problem of Mr. Remmer, did you have a conversation, or conversations, with Mr. Remmer and with Mr. Maundrell, concerning the Remmer enterprises or enterprises in which Mr. Remmer was interested? A. I did.

Q. And from your conversation with Mr. Maundrell and Mr. Remmer—was it more than [2615] one conversation?

A. Just one with Mr. Maundrell.

Q. And did you learn Mr. Maundrell's capacity in connection with the enterprises in which Mr. Remmer was interested in that conversation?

Mr. Campbell: Objected to as incompetent and calling for hearsay.

The Court: Objection sustained.

Mr. Gillen: I am asking him if he learned of Mr. Maundrell's capacity.

The Court: The objection has been sustained.

Q. All right. From your discussion with Mr. Maundrell concerning the enterprises in which Mr. Remmer was interested, did you determine whether or not Mr. Maundrell was acquainted with Mr. Remmer's businesses?

Mr. Campbell: Objected to as calling for hearsay.

(Testimony of John P. Thatcher.)

The Court: Objection sustained.

Q. All right. Now on April 8th, calling your attention to the date of April 8, 1948, I will ask you whether or not, by previous arrangement made with you, you met with any representatives of the Internal Revenue Department?

A. Yes, on that day I met with Mr. Weaver, Mr. Morgan, and Mr. Harkness.

Q. Where did that meeting take place?

A. It took place in my office, 206 North Virginia Street, Reno. [2616]

Q. What time in the day, do you recall, was that meeting scheduled for?

A. It is my recollection it was scheduled for two o'clock in the afternoon.

Q. And prior to the arrival of the men you have mentioned from the Internal Revenue Department, did you see that Mr. Remmer that day?

A. Yes, I had Mr. Remmer come over at 1:30.

Q. Did you have a conversation with Mr. Remmer that day?

A. Yes, I spoke to Mr. Remmer with Mr. Woodburn in Mr. Woodburn's office.

Q. In that same suite of offices?

A. In that same suite of offices.

Q. Now following your conversation with Mr. Remmer and Mr. Woodburn, did Mr. Remmer remain in your suite of offices, or did he go elsewhere?

A. Following that conversation in Mr. Woodburn's offices, he remained in Mr. Woodburn's office for a while and then he went in the library.

(Testimony of John P. Thatcher.)

Q. When the Internal Revenue men arrived, where did you receive them?

A. In my room, No. 206.

Q. Who came into the room first?

A. I think Mr. Morgan, followed by Mr. Weaver and Mr. Harkness. [2617]

Q. Was anybody else with them at that time?

A. They had a typist, stenographer, with them at that time.

Q. Was that a man or woman?

A. It was a woman.

Q. Did you have a conversation with Mr. Weaver or the other gentlemen at that time?

A. Yes, I did.

Q. Was Mr. Remmer in your private office at that time?      A. No, he was.

Q. Throughout that entire meeting was Mr. Remmer ever in your presence, in the presence of Mr. Weaver or Mr. Morgan or Mr. Harkness?

A. He was not.

Q. Did the lady who was the stenographer remain in your private office during the conversation you had with the Internal Revenue men?

A. No, after a short while she left and went out to the reception room.

Q. What was the conversation you had with Mr. Weaver, Mr. Morgan and Mr. Harkness at that time, and if you will relate as near as you can, recall who did the talking.

A. The arrangement for the meeting was that Mr. Weaver, Mr. Harkness and Mr. Morgan wanted

(Testimony of John P. Thatcher.)

to talk to Mr. Remmer and ask him some questions. When they came into the office they three sat in front of my desk, about three or four feet in [2618] front of it in three chairs, and Mr. Morgan asked if Mr. Remmer was present, and I said yes, he was in the office.

Q. By office, what did you mean by that, the same room or elsewhere?

A. I meant in the suite of offices, and I then asked Mr. Morgan what was the purpose of the questioning, and Mr. Morgan or Mr. Weaver, I don't know which, said that they just wanted to ask him some questions about his income tax. I then asked if they had any particular year in mind and they said no, and then I asked if there were any particular items of income as to which they desired to question Mr. Remmer and they said they did not desire to commit themselves on that, they just wanted to ask him questions, and then I asked if their purpose in coming was to obtain evidence for criminal prosecution, and Mr. Weaver, I think, said he could not say as to that at that time, and I then questioned them at some length regarding the purpose of the questions of Mr. Remmer. As to the answers to all my questions they were non-committal.

Q. They gave you no information other than they wanted to question him?

A. None whatsoever.

Q. Now how long would you say the interview that you have in mind here consumed?

(Testimony of John P. Thatcher.)

A. Oh, not more than 15 or 20 minutes.

Q. At the conclusion of that interview, or at any time during that interview, did you hand to anyone of the Internal Revenue [2619] men a typewritten prepared statement, expressing your position in the matter, as attorney for Mr. Remmer?

A. Yes, I did.

Q. And to whom did you hand that?

A. I think Mr. Weaver.

Q. Do you have a copy of that statement?

A. I do.

Q. Will you produce it, please?

Mr. Gillen: I will have this marked for identification, with the Court's permission.

The Clerk: G-1.

Q. Now, Mr. Thatcher, when was it, if you recall, that you handed Mr. Weaver the prepared typewritten statement now identified as defendant's G-1 for identification? Was it at the conclusion of your interview?

A. At the very conclusion of the interview.

Q. Now prior to handing the prepared statement over, did you express your position orally to the three Internal Revenue men?

A. I did. I told Mr. Weaver that under no circumstances would I permit the agents of the Bureau to question Mr. Remmer on a fishing expedition.

Q. Then at the conclusion, as I understand it, you handed them this prepared statement?

A. I did. [2620]

Mr. Gillen: Now I will offer this statement, may

(Testimony of John P. Thatcher.)

it please the Court, as defendant's exhibit next in order in evidence.

Mr. Campbell: No objection.

The Court: It may be admitted. G-1.

Mr. Gillen: With the Court's permission, I should like to read this statement to the jury.

The Court: You may do so.

Mr. Gillen: (Reads Exhibit G-1.)

Q. Now, did you also assure the agents of the Internal Revenue at that time——

Mr. Campbell: I am going to object to leading question, which this obviously is going to be.

The Court: I can see it is going to be leading and try to avoid leading questions.

Mr. Gillen: I thought it was more a summarization what he previously testified.

The Court: Well, it is leading.

Q. All right. In your oral discussion with the agents of the Internal Revenue Department, did you on that date, in your office, in substance relate to them what was in this statement?

A. In substance, yes.

Q. And did you include in that that you would make Mr. Remmer available in the event that some specific charge——

Mr. Campbell: Objected to as leading, if the Court please. [2621]

The Court: Objection sustained.

Q. Look at the last paragraph of this document and tell me if you said anything to them of the general nature contained in that last paragraph?

(Testimony of John P. Thatcher.)

A. Yes, I said I would make available to them such books and records of Mr. Remmer's business as I could and I did so.

Q. You did so at some subsequent time?

A. Yes, I gave Mr. Weaver all of our files on the income tax problem.

Q. Did you say anything about ever making Mr. Remmer available to them or not?

A. I don't recall whether I did orally or not.

Q. Of course that was contained in the statement which you prepared? A. Yes, sir.

Q. Now, after this incident that you have related took place, I take it that the three Internal Revenue men withdrew from your office?

A. Yes.

Q. And it was at some later time that you turned certain files and books to Mr. Weaver?

A. Yes, it was following that conversation, at a later date.

Q. Now, Mr. Thatcher, Mr. Weaver has testified here that on April 8, 1948, that he and the other two agents mentioned, were in your office at the address you gave and present in your [2622] office at that time was Mr. Remmer, the defendant in this case, and that you were also present and that you introduced Mr. Remmer to the three agents and that a discussion was had, at the conclusion of which you stated to the agents that you were advising Mr. Remmer to answer no questions or make no statements, and Mr. Weaver further testified that he then personally addressed Mr. Remmer



(Testimony of John P. Thatcher.)

and asked Mr. Remmer, in effect or words, "Is what your attorney stated your attitude, that you will make no statements and answer no questions?" and that Mr. Remmer said that that was his attitude, that he would make no statements and answer no questions. Now, Mr. Thatcher, I am going to ask you whether or not such an incident as was described by Mr. Weaver took place in your office on April 8, 1948, or at any other place at any other time, or at all? A. It did not.

Q. Was Mr. Remmer, to your knowledge, ever in the presence of these three agents in your presence and sight? A. He was not.

Q. Mr. Thatcher, were you acquainted in his lifetime with a man by the name of Robert Jeffers?

A. Yes.

Q. And directing your attention to the year 1949 or 1950, did you ever have a conversation with Mr. Jeffers concerning a 50 thousand dollar promissory note from Mr. Remmer to Mr. Jeffers?

Mr. Campbell: Objected to as calling for hearsay. [2623]

The Court: Objection sustained.

Mr. Gillen: As to the answer to this question, your Honor, I believe there is no hearsay involved. He can state whether he had a conversation, yes or no.

The Court: The question incorporates the subject matter of the alleged conversation. I think the two together you would have hearsay.

Q. Well, let me put it this way. Did you, in the

(Testimony of John P. Thatcher.)

year 1949 or 1950 have any conversation with Mr. Jeffers regarding any transaction between himself and Mr. Remmer?

Mr. Campbell: Objected to as calling for hearsay and immaterial.

The Court: Answer the question yes or no.

A. Yes.

Q. Can you tell us what that conversation was?

Mr. Campbell: Objected to as calling for hearsay.

The Court: Objection sustained.

Mr. Gillen: May it please the Court, I should like to be heard on that matter because I have at this point in the examination of Mr. Thatcher a matter that pertains to an admission against interest by Mr. Jeffers.

The Court: I will not take the time, Mr. Gillen. It is the same subject we have discussed before and the ruling will stand.

Mr. Gillen: May I say this to your Honor respectfully? [2624]

The Court: The ruling will stand.

Mr. Gillen: I wish to say further, your Honor——

The Court: I am not going to have any further discussion on this question. The ruling has been made and will stand and we will proceed to the next question.

Mr. Gillen: I was just going to tell your Honor——

The Court: I do not want you to.

(Testimony of John P. Thatcher.)

Mr. Gillen: You don't know what I am going to say. I might say something that is enlightening to you.

The Court: There is nothing before the Court and we are not going to have anything in this record except questions and answers to questions.

Mr. Gillen: We are supposed to have some—

The Court: Proceed.

Mr. Gillen: Then I ask at this time to be permitted to make an offer of proof.

The Court: Well, we will excuse the jury.

(Jury and alternate jurors admonished and excused at 10:25 a.m.)

(In the absence of the jury.)

**OFFER OF PROOF RE: JEFFRESS NOTE**

(Feb. 7, 1952, Notebook 341, pp. 3-18.)

Mr. Gillen: Now, may it please the Court, we have here a situation of an admission against interest by Mr. Jeffress, against his own interest, to Mr. Thatcher. We offer to prove in the year 1949 or 1950 that Mr. Thatcher and Mr. Robert Jeffress, now deceased—I believe it will be fixed as the year 1951 that Mr. Jeffress died—it may have been the end of 1950—we offer to prove that Mr. Jeffress had a conversation with Mr. Thatcher, in which Mr. Jeffress discussed the fact that he had loaned in 1946—of course your Honor knows there is evidence to that effect already in the record—Mr. Remmer fifty thousand dollars and that he had

obtained from Mr. Remmer a note for \$50,000 and that in connection with the income tax indebtedness and problems Mr. Thatcher was then handling for Mr. Remmer as attorney for Mr. Remmer, that Mr. Thatcher requested that Mr. Jeffress turn over to him the promissory note for the \$50,000, so that it could be taken up with the accountant, and further that in this conversation it was admitted and revealed by Mr. Jeffress to Mr. Thatcher that the \$50,000 obligation, evidenced by that note, had been paid by Mr. Remmer to or on behalf of Mr. Jeffress.

Now, while we recognize the well-founded rule, may it please the Court, that conversations out of the hearing or presence of persons interested in the case is hearsay, there are several exceptions to the hearsay rule and one of the exceptions, may it please the Court, is the exception of which the prosecution in this case took advantage and upon which your Honor ruled favorably for the prosecution. The statement on which your Honor ruled is found on page 89 of the transcript, where Mr. Thompson addressed your Honor and said: "Your Honor, I would like \* \* \*. I am saying that generally \* \* \*," and the Court then interrupted and said: "Have you authority. Let us hear the authority."

Now this situation arose, your Honor will recall, in the instance of the appearance on the witness stand of Mrs. Badovinatz, who testified, and your Honor first heard the testimony out of the presence of the jury, in order to enable your Honor to pass on the efficacy of the contentions of the prosecution. Mrs. Badovinatz testified that in February,

1947, her husband, then deceased at the time she appeared on the witness stand, had told her he was going to the bank in Fresno to get a cashier's check to repay Bones Remmer five thousand dollars he owed him. Your Honor heard that testimony and determined that that was a declaration against interest on the part of this defendant by way of acknowledgment of an indebtedness to Remmer, and having heard that matter out of the hearing and presence of the jury, your Honor then called in the jury and permitted her to testify and, of course, your Honor will recall further objection was made by me on the grounds there was no showing when the indebtedness was incurred, but that is not the problem here. Subsequently there was other evidence in support of that declaration against interest brought here in the form of cashier's check. Your Honor will recall they had one obtained by Mr. Badovinatz made payable to Mr. Remmer in the sum of \$5,000. Now, here we have evidence already in the record concerning the transaction of the borrowing and we are now reaching the point of payment of the \$50,000 obligation.

The Court: Let me ask a question. You thought there was error at that time on the part of the Court to admit that testimony of the lady.

Mr. Gillen: We thought it was error for this reason, that there would have to be a showing here whether the obligation was incurred within the period of time involved in the indictment here.

The Court: Did you at that time make an objection on the ground that it was hearsay?

Mr. Gillen: Yes, we urged the hearsay objection.

The Court: If you were right, then are you right now? My thought is if the Court has erred in that testimony, I will strike it and strike any exhibit introduced in relation to it.

Mr. Gillen: Your Honor refused to do it.

The Court: I am always happy, if you can point out where I have made any error throughout the course of this trial, I will be glad to hear you and back track, so when we are finished we will have a record as free of error as humanly possible for me to have. So that presents this problem, and I think it is the duty of the Court, if it appears at any time during the course of the trial that the Court has made an error in ruling and admission of any testimony or exhibits, that the Court should strike those matters from the record.

Mr. Gillen: Well, this is our position in regard to the Badovinatz matter, your Honor, and this is what was urged the other day by Mr. Avakian in his motions to strike certain portions of the transcript. We think, and we are satisfied from a reading and research of the authorities, that there is an exception to the hearsay rule, where an admission against interest has been made by a person who is either deceased or beyond the control of the court, to appear and testify in person. However, in the Badovinatz matter, we had the other problem involved, that it not being possible to establish when the obligation was incurred—we have no promissory note to give us the date of the incurrence of the

obligation as we have in this instance here in the Jeffress case—we contended—your Honor will recall Mr. Thompson remarking the other day there was only about 31 or 32 days that this obligation should have been incurred before February 8th to bring it in, and he told your Honor he thought your Honor should be allowed to speculate on when the loan was made. Our strenuous objections, which we still urge, and our contention it was error to allow it in, which we still urge, was not upon the point that it was not proper under the exception to the hearsay rule declaration against interest of a deceased person, but rather there was no connection made to show when the obligation was incurred.

Now, Mr. Golden reminds me that we further urged at that time that it was privileged conversation between husband and wife, which your Honor thought was not meritorious at that time, so we feel that we have here a situation that is squarely within the rule and on which your Honor properly can rule is an exception to the hearsay rule and that the other objectionable aspect that was present in the Badovinatz matter is not in this case. We have some authority on this—Wigmore on Evidence and Corpus Juris Secundum, both of which hold declarations against interest is a proper exception to the hearsay rule, and as to that, I do not feel that your Honor's ruling was correct in the Badovinatz instance.

The Court: Let me ask you this question—declaration against whose interest?

Mr. Gillen: Against the interest of Mr. Jeffress.



The Court: Do the authorities go that far?

Mr. Gillen: Well, it can only be declaration against interest of the defendant, your Honor, in one form or the other.

The Court: Could there be a question of whether or not the interest against whom the declaration is made or was made, would be confined to the interest of a party to the action?

Mr. Gillen: No, it wasn't in the Badovinatz matter.

The Court: No, I realize that.

Mr. Gillen: Mr. Badovinatz was no party to the action. Mr. Badovinatz made declaration against interest which indicated he had an obligation against the defendant in this case which he paid within the period of time that we are interested in here. It is declaration against interest of the declarant who is now either dead or beyond the control of the Court. Your Honor recognizes there are many declarations against interest. A common one is in an automobile traffic violation, a man says, "My brakes didn't hold," or "I didn't see" or "I was going too fast" or "I ran through the red light by mistake." In effect he is saying, it is my fault, I am obligated to you under the circumstances. In regard to owing money, there are declarations against interest—a man can say, "I owe John Jones so much," that is declaration against his interest, or he can say, "John Jones owed me so much but now he paid it." That is declaration against his interest because he is admitting that there is no longer due to him an obligation, that it has been paid and the slate



is clean. He is declaring against interest because he is burning his bridges behind him to make any claim against that obligation. Mind you, we have here, at the starting point of this whole transaction, the preparation by Mr. Maundrell of the promissory note which is in evidence, we have the passing of the money, some bank records to show how the money went thru the conduit to Mr. Remmer's interest, namely, the Cal-Neva account, and reflecting the withdrawal of that amount from the bank on account of Mr. Jeffress in San Francisco, and we are now attempting to present to the jury declaration of interest by Mr. Jeffress to the effect, "I will give back the promissory note because the obligation has been paid." In other words, "I no longer have a claim for the \$50,000."

The Court: What is it you expect to prove, Mr. Gillen, in this record?

Mr. Gillen: I expect to prove by Mr. Thatcher in this regard that while Mr. Thatcher was working on this income tax problem in 1949 and 1950—and I might state to your Honor there are some other aspects—a petition for readjustment of the tax claims in connection with the Jeffress assessment that was levied against Mr. Remmer's assets—Mr. Thatcher was working on that and it came to his attention an obligation of \$50,000 which Mr. Remmer owed to Mr. Jeffress had been paid, but the evidence of the payment of that obligation was not completed, in that Mr. Jeffress still had the note, and Mr. Thatcher communicated with Mr. Jeffress, asked Mr. Jeffress if the obligation had

been paid and if so would Mr. Jeffress return the note, so Mr. Thatcher might have it in his hands, or the hands of the accountant who was working on the matter. We will prove Mr. Jeffress (1) admitted the obligation was paid, and (2) Mr. Jeffress returned the note. That is the whole sum and substance.

The Court: Have you concluded now?

Mr. Gillen: Yes, and I would like to have your Honor hear the testimony out of the presence of the jury, as you did in the instance of Mrs. Badovinatz, and I think your Honor will then rule consistently as you did in the Badovinatz matter, that this is a recognized exception of the hearsay rule.

Mr. Campbell: I think the last suggestion should be followed in connection with the offer of proof, in the event your Honor is inclined, from the general statement, to admit the evidence. However, my understanding of the rule of these matters does not coincide entirely with that of Mr. Gillen's. My understanding of the rule is this, that as an exception to the hearsay rule, a statement made by a decedent against his pecuniary interest at the time that he makes the statement—and by against his pecuniary interest I mean his referring to an obligation which he admits owing at the time he makes the statement—is admissible, but a statement of past events does not come within that exception to the hearsay rule. I was going to say the situation of the Badovinatz evidence is entirely distinguishable from this proffered evidence. There

Mrs. Badovinatz was testifying as to admission by her husband that on the date he made that statement he owed Remmer the sum of money that was involved—I forget what it was—five thousand dollars—which was against his then personal pecuniary interest. Now, the general rule as set forth here in *Corpus Juris Secundum*—I am reading from Vol. 31 at page 963—“To be admissible as a declaration \* \* \*.” Then as to pecuniary interest it states: “Where the declarant had adequate knowledge of the facts stated \* \* \*,” which presents another facet of the matter and that is, if the statement were against his then existing pecuniary interest, then it is admissible. It must also appear that primary evidence, rather than this hearsay evidence, is not available to the proponent of the evidence. Here—and I say this without the presence of the jury—primary evidence is available to the defendant as to the circumstances, the making and the circumstances of the obligation referred to, at any given period of time.

I submit, your Honor, that under the circumstances that the proffered evidence is not admissible as it does not fall within the exception to the hearsay rule and is in no way inconsistent with your Honor’s ruling on the Badovinatz matter.

The Court: Your point is at the time the declaration was made and the declaration that was admitted in evidence, would show that at a prior time the declaration was made to Mr. Thatcher the loan had been paid?

Mr. Campbell: That is the statement made by counsel.

The Court: And for that reason at the time the declaration was made there was no interest against which the declaration was spoken?

Mr. Campbell: That is correct.

The Court: Then the other point.

Mr. Campbell: That there is no showing that primary evidence is not available.

The Court: Such exceptions to the hearsay rule as to declarations against interest cannot be utilized if primary evidence of the transaction is available and you say that this is the situation here?

Mr. Campbell: That is the situation. I would like to make one observation.

The Court: Read that authority again, what you denominated primary evidence.

Mr. Campbell (Reads): "Where declarant had adequate knowledge of the facts stated and primary evidence cannot be procured, the declaration is admissible if made against his pecuniary interest." Now, in this instance we say that one of the conditions—that is, the absence of primary evidence or showing that primary evidence cannot be obtained—cannot be complied with.

Mr. Gillen: I would like to know what he means, primary evidence that is available.

Mr. Campbell: Well, would be evidence of one party to the transaction itself. Of course, that is the primary evidence. May I make this further statement, if the Court please. I think it is apparent the reason for this rule, and why it is an excep-

tion to the hearsay rule, and I believe all the authors, including Wigmore, refer to this—why it must relate to a statement against the then present pecuniary interest, is the belief and the logic that a man would not ordinarily lie about owing somebody something or not having ownership of something because it is an admission on his part of a then existing debt and that is the reasoning behind that exception to the hearsay rule.

The Court: That same reasoning is here. When a man makes a statement that he is not indebted, in the face of an apparent liability and note for \$50,000, when he said, "I am not indebted," why that is and the effect would amount under such circumstances to the same thing you have just stated here. He would be inclined, if he was not honest, he would be inclined to deny that he was paid. When he said it was paid, why it is certainly some evidence of the truth of his statement.

Mr. Campbell: I suggest that we hear the proposed evidence outside of the presence of the jury before the Court rules, in order that we can see the legal scope of the offer.

The Court: I think that might be a good idea.

Mr. Gillen: I suggested that, your Honor. It is entirely agreeable.

The Court: Very well.

MR. JOHN P. THATCHER

took the witness stand, and having been sworn, testified as follows:

Direct Examination

By Mr. Gillen:

Q. Mr. Thatcher, so you may be enlightened upon the proceeding, the Court has determined to hear evidence on a phase of this matter out of the presence of the jury, in order to enable it to rule upon the offer. Is that a correct statement, your Honor?

The Court: Yes, sir.

Q. Mr. Thatcher, in the years 1948, 1949, and 1950 you were engaged as an attorney doing some work upon the income tax problems of Mr. Remmer?

A. That is right.

Q. And had there been a jeopardy assessment levied upon Mr. Remmer's assets on a civil complaint for income taxes?

A. There had in March, 1949.

Q. In connection with the jeopardy assessment, did you prepare some sort of a petition which was filed with the Internal Revenue Bureau?

Mr. Campbell: I don't understand this was the matter of the subject—

The Court: I don't either. I don't see where this would be material.

Mr. Gillen: I was giving your Honor a little background of the work he was doing at that time and the reason for the talk with Mr. Jeffress, that's all. I can go right to the point.

(Testimony of John P. Thatcher.)

Q. In 1949 or 1950 did you have a conversation with Mr. Jeffress regarding transaction between himself and Mr. Remmer which had taken place in 1946? A. I did.

Q. And was that with regard to a promissory note that Mr. Jeffress was holding against Mr. Remmer? A. It was.

Q. And do you know what the amount of that note was? A. I believe it was \$50,000.

Mr. Campbell: I presume in the presence of the jury he is going to be asked the conversation. That is a leading question. I am not making objections here because the jury is not present.

The Court: No, that is right. In the presence of the jury we ought to avoid leading questions.

Q. Now, Mr. Thatcher, will you relate to the Court what conversation you had with Mr. Jeffress at that time regarding the \$50,000 obligation, \$50,000 note?

A. I got in touch with Mr. Jeffress immediately following the filing of the petition and asked him to bring to me or Mr. Semenza the note for the \$50,000 which he had in his possession, which he did. He gave it to Mr. Semenza.

Q. Did you have any conversation with him at that time as to whether or not the obligation had been paid?

A. I don't recall whether or not I did. I don't know whether it was paid or not at that time.

Q. But Mr. Jeffress did relinquish or surrender the promissory note?

(Testimony of John P. Thatcher.)

A. Yes, he turned it over to Mr. Semenza.

The Court: Well, that ends that discussion; it certainly couldn't be a declaration against interest under the circumstances of this conversation.

Mr. Campbell: I submit this line of testimony is immaterial.

The Court: Yes.

Mr. Gillen: If a man relinquishes anything of evidence, let us hear what he had to say, whether the note should be given back to him, whether it was paid, or whether he surrendered it or not. I want Mr. Thatcher to see the note.

Q. I show you here defendant's Exhibit A-1 and ask you whether or not you recognize that as the note that was surrendered to you by Mr. Jeffress?

Mr. Campbell: He says it wasn't surrendered to him.

The Court: I wish you could avoid leading questions.

Mr. Gillen: Of course, I am not asking the witness in the presence of the jury.

The Court: You still have the possibility of that effect of leading questions.

Mr. Gillen: I think your Honor can separate the wheat from the chaff.

The Court: Very well, but I do not want leading questions.

Q. Are you acquainted with the note, ever seen it before?      A. Yes.



(Testimony of John P. Thatcher.)

Q. Do you know whether or not that was the note Mr. Jeffress surrendered to either you or Mr. Semenza?

A. I know Mr. Semenza had this note in his possession.

Q. When you talked to Mr. Jeffress about surrendering the note, did Mr. Jeffress in anywise protest or ask that the note be returned to him or ask how long it would be kept or anything of that sort?

Mr. Campbell: Same objection.

The Court: Objection sustained.

Q. Let me ask you this: Do you have any recollection of anything Mr. Jeffress said about surrendering the note for \$50,000 to either you or Mr. Semenza?

A. Mr. Jeffress recalled the indebtedness and I asked if he knew there was a note in existence and he said there was and he would look it up and bring it in.

Q. Do you recall, Mr. Thatcher, when you talked to Mr. Jeffress whether or not Mr. Semenza was present?

A. No, he was not.

Q. Did Mr. Jeffress say anything about having the note returned to him, or anything of that nature?

A. No, he didn't mention that.

Q. Did you tell Mr. Jeffress what you wanted the note for?

A. I told him we wanted it as proof of this loan which had been made by him to Mr. Remmer.

Q. Did you say anything concerning any further matter relating to the loan?

(Testimony of John P. Thatcher.)

A. I told him that up to that time we had no knowledge—rather. I told him that we had been informed of the circumstances of the loan but had no evidence of it and wanted to verify the existence of the loan.

Q. Did you say anything to him about whether or not the loan had been repaid?

Mr. Campbell: Objected to—

The Court: Objection sustained. Now, that is the third time you have suggested answers to the witness.

Mr. Gillen: I was directing the witness' attention to a—

The Court (Interceding): Objection is sustained. I think we ought to find, and believe we have already from this witness, the entire substance of this conversation. If there is anything else in his conversation, I would like to know about it. Is there any further substance to this conversation?

A. I do not believe there is, your Honor.

Q. When you were speaking to Mr. Jeffress on that occasion about returning the note to you or Mr. Semenza, did you know at that time whether or not that obligation had been liquidated or paid?

Mr. Campbell: Objected to as calling for conclusion.

The Court: Objection sustained.

Mr. Gillen: Whether or not he had any knowledge?

The Court: The objection is sustained.

(Testimony of John P. Thatcher.)

Mr. Gillen: I didn't get the grounds of the objection.

The Court: The one ground I have in mind, it savors of attempt to evade the rulings of the Court.

Mr. Gillen: I don't think so. The man can say whether he did or not.

The Court: I am not going to argue. That is the ruling.

Mr. Gillen: I think a man can answer whether he did or not.

The Court: I am not going to argue. Any further questions?

Mr. Gillen: Your Honor seems to forget that we are advocates here.

The Court: The objection to the question will be sustained.

Mr. Gillen: Your Honor's ruling is a man can't say yes or no?

The Court: You heard my ruling and you understand.

Mr. Gillen: No, I don't understand, that is why I am asking. I want to keep out of trouble with the Court. I want to know what your Honor's policy is, whether a man can answer yes or no.

The Court: The objection is sustained on the grounds set forth in the objection. So we will call in the jury.

Mr. Gillen: What is the ruling on the matter, your Honor?

The Court: Objection is sustained.

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.) [2625]

**MR. THATCHER**

resumes the witness stand.

**Mr. Gillen:** In view of the Court's ruling, no further questions of Mr. Thatcher.

**Cross-Examination**

**By Mr. Campbell:**

**Q.** Now, Mr. Thatcher, returning to your testimony regarding a meeting in your office of April 8, 1948, which you place in the afternoon of that day. I believe you stated the government agents arrived about two o'clock?

**A.** I believe the appointment was set for that time, yes.

**Q.** Now the appointment had previously been made, had it? **A.** Yes, it had.

**Q.** By you?

**A.** No, it had been made with me.

**Q.** And by whom had it been made with you?

**A.** My recollection is that it was made by telephone call from San Francisco.

**Q.** And with whom did you have that conversation? **A.** I think it was probably Mr. Kyne.

**Q.** That is Willie Kyne? **A.** Yes.

**Q.** Now it is a fact, is it not, that the purpose

(Testimony of John P. Thatcher.)

of that meeting was the request of the government agents to interview Mr. Remmer, is that correct?

A. That is correct.

Q. Now you say that Mr. Remmer was present in your suite of [2626] offices on that day?

A. Yes, sir.

Q. When did you arrange, or when was the appointment made with Mr. Remmer for his presence?

A. Well, that had been arranged about the latter part of March.

Q. That he was to be in your office on that occasion?

A. That's right.

Q. And was that pursuant to the request of the revenue agents to interview him?

A. It was.

Q. So that the original purpose of the meeting was for the interview of Mr. Remmer, is that correct?

A. That's correct.

Q. Now was the first time that you met with the agents regarding request to interview Mr. Remmer on April 8th?

A. Yes, it was.

Q. You had no previous meeting with them?

A. No.

Q. Now you say the discussion lasted about 20 minutes?

A. Somewhere around there.

Q. And I believe you stated that in addition to Mr. Weaver, Mr. Harkness and Mr. Morgan, there was also present a typist or stenographer?

A. Yes. [2627]

Q. And was that a typist or stenographer that those gentlemen brought with them?

A. Yes.

(Testimony of John P. Thatcher.)

Q. And was she present throughout the discussion? A. Not to my recollection, no.

Q. Do you recall whether or not anything was said at that time by you to the effect that a stenographer could not be present? A. No.

Q. Do you have any distinct recollection of her having left that meeting? A. Yes, I do.

Q. How soon after the meeting commenced did she leave?

A. Oh, I would say about 10 minutes.

Q. Do you recall the occasion for her leaving at that time?

A. Well, it became pretty obvious when she left.

Q. What was said?

A. Well, I say I don't recall what was said, but it became obvious Mr. Remmer was not available for questioning.

Q. Now you are positive, are you, Mr. Thatcher, that Mr. Remmer did not enter the room where you and the agents were at any time?

A. I am quite positive.

Q. Now do you remember, Mr. Thatcher, that in the course of that conversation that one of the agents, Mr. Weaver, stated to you that the only grounds upon which Mr. Remmer could [2628] refuse to be questioned was on constitutional grounds of his right against self-incrimination, and that that was a personal right which he himself had to claim. Do you recall that statement?

A. I do not recall that exact language, something to that effect.

(Testimony of John P. Thatcher.)

Q. You recall that in substance, is that correct?

A. No, I do not recall that in substance. Something to that effect might have been said.

Q. Do you have a recollection any such statement was made, either in words or in substance?

A. No, I do not.

Q. Now you say that on this occasion you handed the agents this written statement, Defendant's G-1, is that correct?

A. That is correct.

Q. Did you have a stenographer present during this meeting?

A. No.

Q. Did any stenographer come into the room during this meeting?

A. No.

Q. This was a statement which you had written up prior to that meeting with the agents on that occasion?

A. It was.

Q. And you say you had never met any of these agents prior to that time? [2629]

A. No.

Q. When did you actually dictate this statement to your stenographer?

A. On the morning it took place.

Q. And your appointment was for two or 2:30 that afternoon?

A. Two o'clock.

Q. So that the statement was prepared and ready at the time the agents arrived?

A. It was.

Q. Now isn't it a fact, Mr. Thatcher, that this statement was handed to the agents in the presence of Mr. Remmer?

A. It is not.

Q. Your testimony is that, although having Mr. Remmer present, you kept him in another room at all times?

A. That is right.

(Testimony of John P. Thatcher.)

Q. Was that in an adjoining room to that where you had your meeting?

A. First Mr. Woodburn's, which adjoins to the east of mine, and then he left Mr. Woodburn's room and went to the library, which is across the hall and one door to the west.

Q. Where was he, if you know, during the 20 minutes that you were with the agents?

A. Well, I believe he was part of the time in Mr. Woodburn's office and the latter portion of the time in the library. He was in the library when the agents left. [2630]

Q. Did you consult with Mr. Remmer at any time during that 20 minutes? A. No.

Q. Or did you see or observe Mr. Remmer in his movements during that period of time?

A. No.

Q. You are satisfied, are you, Mr. Thatcher, that you are not mistaken when you state that Mr. Remmer was not present at any time with the agents on that occasion? A. I am not mistaken.

Q. Were the agents in the library at any time?

A. No.

Q. Were you there when they came into the ante-room of your office? A. I was in my office.

Q. Do you know when they first arrived at your suite of offices on that date?

A. Probably just shortly before.

Q. Do you know that or do you simply assume that? A. I simply assume that.

Q. Do you know whether or not on that occasion



(Testimony of John P. Thatcher.)

that they had to wait a while before seeing you and were sent to the library of your office?

A. No, they would not be sent to the library.

Q. Isn't it customary in the offices which you maintain, where [2631] a number of people were waiting to occasionally have some of them waiting in the library?

A. It is the custom once in a while.

Q. And do you know, of your own knowledge, whether or not that occurred on that occasion?

A. I do not know.

Q. So that a moment ago, when you said they were not, you were simply assuming?

A. They were not what?

Q. That they did not go into the library?

A. Well, as I recall, there was no reason for them to go into the library at that time. They would be in the reception room.

Q. But you have no knowledge of it?

A. No, I haven't.

Q. Did you, or have you at any time, met Mr. Weaver and the other agents in the presence of Mr. Remmer?

A. No.

Q. Never on any occasion?

A. No.

Q. Do you still represent Mr. Remmer?

A. I do not.

Q. Over what period of time did you represent him as his attorney?

A. The early part of 1948, and then I think the following [2632] first of March, 1949, up to July 1, 1950.

(Testimony of John P. Thatcher.)

Mr. Campbell: I think that is all.

Redirect Examination

By Mr. Gillen:

Q. Mr. Thatcher, you left the firm and became disassociated with the firm of Thatcher, Woodburn and Forman when?

A. On the 30th of June, 1950.

Q. Now, Mr. Thatcher, with regard to the interview that you had with Mr. Remmer in Mr. Woodburn's office prior to the arrival of the agents, am I correct in assuming that your testimony is that when you left Mr. Remmer on that occasion to go to your own office and receive the agents, that Mr. Remmer was in Mr. Woodburn's office?

A. He was.

Q. And then am I correct in assuming from your testimony that you did not see him again until after the agents left?

A. I did not.

Q. And when you saw him again he was in the library?

A. After the agents left I opened the door of the library and found him.

Q. Do you know whether or not the agents came directly from the reception room into your office?

A. Well, I know only there was no waiting period between the time they were announced by the receptionist and the time they came to my office.

Q. And during the period of time that you talked with the [2633] agents, is it true or not true that

(Testimony of John P. Thatcher.)

any of the agents left the room and went into the library or any other part of the suite of your offices?

A. None of the agents left the room during that time.

Q. In other words, they came into your private office immediately after announced by the receptionist and remained with you throughout the period of 15 or 20 minutes, whatever time it took, and then left your offices? A. That is true.

Q. Now with regard to Defendant's Exhibit G-1 in evidence, the statement that you prepared, you stated that you prepared that on the morning of April 8th, is that correct? A. That is right.

Q. Was it within your knowledge prior to the making of this appointment at your office by the agent that Mr. Remmer's income tax affairs were being investigated by the Internal Revenue Department? A. It was.

Q. And it is your recollection that Mr. Kyne made the appointment for the agents with you?

A. That is the best of my recollection, yes.

Q. On a phone call from San Francisco?

A. Yes, I think so.

Q. You fixed the time and hour that you would receive them? A. Yes. [2634]

Q. Now what was your purpose in preparing the statement in advance of the arrival of the agents?

Mr. Campbell: Objected to as incompetent.

The Court: Objection sustained.

Mr. Gillen: I think that is all.

Mr. Campbell: Nothing further.

(Witness excused.)

**WILLIAM GRAHAM**

a witness for the defendant, being duly sworn, testified as follows:

**Direct Examination**

By Mr. Gillen:

Q. Mr. Graham—I may be hazy on this, you may have answered this question at the previous examination—were you acquainted during his lifetime with a man by the name of J. B. Scarlett, also known as Jack Sullivan? A. Very well.

Q. As a matter of fact, Mr. Scarlett, also known as Sullivan, was associated with you in business enterprises? A. For many years.

Q. In Reno. Now during the year 1946, I believe you have already testified that negotiations were undertaken, whereby you and another business associate of yours, Mr. James B. McKay, were selling your stock in Cal-Neva Lodge corporation to the defendant in this case, Mr. Remmer, is that correct?

A. Yes.

Q. And by whom was that transaction being handled? [2635]

A. By George Thatcher, the attorney.

Q. By the way, Mr. Graham, is Mr. J. B. Scarlett, also known as Jack Sullivan, still living?

A. No, he is dead.

(Testimony of William Graham.)

Q. When did he die, if you recall?

A. Last year.

Q. Here in Reno? A. Yes.

Q. Now in the course of the negotiations for the sale of that stock belonging to you and Mr. McKay to Mr. Remmer, I believe I am correct in my recollection that you previously testified that there were some personal accounts owing from all three of you to the Cal-Neva corporation that had to be cleaned up and paid? A. That is correct.

Q. And that was also being handled through Mr. Thatcher's office? A. Mr. Thatcher, yes.

Q. And directing your attention to about that time which, if my recollection serves me, was in May or June of 1946, I will ask you whether or not you had a conversation with Mr. Scarlett, also known as Sullivan, regarding a loan to Mr. Remmer?

Mr. Campbell: Objected to; calling for hearsay, if the Court please. [2636]

The Court: Objection will be sustained.

Q. Well, did you have a conversation with Mr. Scarlett at or about that time when the Cal-Neva transaction was being conducted in 1946, May or June?

The Court: You may answer that yes or no.

A. Yes.

Q. I wanted to add something to the question.

The Court: Pardon me.

Q. This is a specific conversation I am seeking to identify, a conversation regarding Mr. Remmer?

A. Yes.

(Testimony of William Graham.)

Mr. Campbell: Objected to as calling for hearsay.

The Court: The answer may stand.

Mr. Gillen: Now, may it please the Court, at this point I think I should seek your Honor's direction as to your Honor's policy. We are about to encounter a situation similar to a matter discussed earlier this morning and I want to know what is your Honor's policy.

The Court: Do you want to take it up in the absence of the jury?

Mr. Gillen: If your Honor thinks that is advisable.

The Court: Yes, I think it is.

(Jury and alternate jurors admonished and excused at 11:30 until 1:45 p.m.) [2637]

Afternoon Session—February 7, 1952—1:45 P.M.

(In the absence of the jury.)

RE: OFFER OF PROOF LOAN TO SCARLETT

(Feb. 7, 1952—Notebook No. 341—P.P. 26-48.)

Mr. Gillen: Would it be your Honor's pleasure that I present this matter in the form of offer of proof first?

The Court: I hardly know what you have in mind.

Mr. Gillen: We have in mind regarding the same type of transaction Mr. Thatcher was testifying to this morning. We desire to offer evidence of

admission against interest on the part of J. B. Scarlett, also known as Jack Sullivan, with regard to a \$25,000 loan made by him to Mr. Remmer and the repayment of that loan, and with regard to his expressed and committed intention to make that loan taking place on two separate occasions.

Now we offer to prove, may it please the Court, through Mr. Graham that at the time in 1946, May or June, that the sale of the Graham and McKay interests to Remmer was under negotiations, that each of the three persons involved in the transaction were required to liquidate, or pay up, certain obligations that they personally owed, or were chargeable to them personally by the Cal-Neva corporation. I think your Honor will recall there is some testimony already in the record that Mr. Graham at that time owed the corporation some four thousand dollars, Mr. McKay owed the corporation three thousand odd dollars and Mr. Remmer owed the corporation some seventy odd thousand dollars, and that that money had to be paid into the corporation before the transfer of stock and so on and the account cleared off.

We offer to prove that at that time that Mr. Scarlett communicated personally with Mr. Graham and stated to Mr. Graham, "I have just promised Bones Remmer that I would loan him \$25,000. He says he needs it to clean up his account with Cal-Neva, is that true?" That Mr. Graham stated to him yes, it was true, that they were all cleaning up their accounts with Cal-Neva. That Mr. Scarlett then said to Mr. Graham, "Well, is it all right to

give it to him? Will I get my money back?" and Mr. Graham said to Mr. Scarlett, "You will get some money back; when he makes money or sells the place, you will get the balance of it, that is how we are going to get our money, that is how we are going to get our money back," and Mr. Scarlett said to Mr. Graham, "All right, then, I promised him I will loan it to him and I will."

We offer to prove that on a number of occasions between 1946, May or June, and 1949, March, that Mr. Scarlett spoke to Mr. Graham and asked Mr. Graham when and if Mr. Remmer had sold or planned to sell or had arranged to sell Cal-Neva, because he wanted to get his 1946 loan back, his money back, and that Mr. Graham on those occasions told him that Mr. Remmer was looking for a buyer for Cal-Neva.

We offer to prove that Mr. Scarlett told Mr. Graham that he had asked Mr. Woodburn, the lawyer, to protect him on the return of the \$25,000 loan in 1946.

We offer to prove, may it please the Court, that in October, if I recollect correctly the month, of 1948, the sale of Cal-Neva by Remmer to the Adler interests was in the process of negotiations and that there was to be an escrow at the First National Bank of Nevada and on that occasion Mr. Scarlett spoke to Mr. Graham and asked him concerning the getting back of his money and that Mr. Graham said, "When the money comes through, you will get your money."



We offer to prove further that although the sale was consummated, if I remember correctly, in October or November of 1948, the escrow was not perfected and the money was not payable until March of 1949, and that on March 2, 1949, Mr. Graham was paid, as was his associate, Mr. McKay, a large sum of the money out of the first money that was paid by Adler to Remmer in escrow at the First National Bank of Nevada, and upon receiving his money, that Mr. Graham communicated with Mr. Scarlett, or talked in person with Mr. Scarlett, also known as Sullivan, and said to Mr. Scarlett, "The money is ready. They are paying it out of the escrow. I got mine; you had better get your loan for 1946 note now. Go over to Woodburn's office," and that Mr. Scarlett said to Mr. Graham—It is disturbing to have counsel laughing when I am trying to talk. There has been a lot of snickering going on in this case and I have noticed it.

The Court: I haven't seen any of it getting to the jury and I don't know what took place.

Mr. Campbell: I don't know to what counsel is referring.

The Court: I hadn't noticed any matter of that kind. If I had and it occurred to me it was derisive, I would ask counsel to desist. I can not believe counsel would do that.

Mr. Gillen: I believe my eyes and I believe the eyes of my associates, who have seen the same thing.

Mr. Avakian: I might say to your Honor on about two occasions——

The Court: There are a lot of things I don't like.

Mr. Gillen: I hope you are not speaking to us.

The Court: I notice when the jury is out that counsel go back and forth to speak and converse with jurors. I do not say they are conversing with them about the case, but I do not believe it is the proper thing to do.

Mr. Gillen: I do not think you have found any reason to find fault with me, your Honor. I have religiously avoided——

The Court: I think we ought not to fraternize.

Mr. Gillen: I do not think the defense has. If they pleasantly, it is just common courtesy.

The Court: I just want to mention things that happen, as long as you are mentioning a few things. I do not think counsel would knowingly offer any derision. I have not noticed any such disposition on the part of counsel on either side, so I hope you are wrong in your assumption, Mr. Gillen.

Mr. Gillen: I hope I am, too. I hope they are thinking up a joke they heard a week ago.

The Court: Yes, I hope so.

Mr. Gillen: Mr. Scarlett said to Mr. Graham at that time: "Well, I got my money. Woodburn took care of it for me."

Now, may it please the Court, this testimony is connected up with the three documents which were offered in evidence yesterday, which were in for identification, and now let me ask you, Mr. Graham:

Q. Would you so testify? You have heard what I offer—would you so testify?

A. I would so testify, the same as you said.

Mr. Gillen: That connects up with that order or assignment to the escrow holder, I think it is D-1, E and F, the escrow order, the cashier's check from the Nevada National Bank, and the receipt signed by Mr. Scarlett, which was handled in Mr. Woodburn's office.

The Court: I understand you are through now. Before you proceed I would like to have you read a little of the first part of this over.

(Record read.)

Mr. Campbell: My objection is that this is calling for hearsay and the testimony is hearsay and further, primary evidence is available, whether or not the loan was made and over what period of time it existed. The primary evidence, of course, would be evidence of the parties to the loan. It is true the evidence would show that Mr. Sullivan is deceased. However, the evidence of the other party to the loan is available to the defense. Under the circumstances, I believe that this hearsay testimony should not be admitted, and I make my objection upon that ground.

Mr. Gillen: I might say Mr. Campbell has already committed himself in previous argument to this very situation. In *Corpus Juris Secundum*, your Honor, Vol. 31, found at page 217, we find this language under the "Evidence" Chapter: (Reads.) Now it is the best available or primary evidence. The statement counsel made regarding best available or primary evidence means best obtainable or

primary evidence of the declarant's declaration, not of the transaction.

The Court: Let me ask you a question. I had a purpose in having that read back to refresh my memory as to what this offer involves. First, it seems to involve, or to be concerned with, a conversation occurring in 1946.

Mr. Gillen: That is right.

The Court: In which Mr. Scarlett advised with Mr. Graham as to the feasibility of making a loan which he promised to Mr. Remmer.

Mr. Gillen: Yes, he had promised it, he had committed himself.

The Court: All right. Then the next conversation in July of 1946, or some time around there, "When is the sale going to be made so I can get my money back?"

Mr. Gillen: That was intervening.

The Court: Yes, that happened some time in 1947, 1948, or 1949, in regard to an escrow proposition. Where is there any declaration here against interest? How could a man say that when he inquired of John Doe, "Shall I loan money to Bill Smith," that is a declaration against interest?

Mr. Gillen: No, it is a little different than that, may it please the Court.

The Court: That is the only basis on which you ask to have evidence admitted as his declaration against interest.

Mr. Gillen: But it is a little different than that. When a man commits himself, makes an agreement to do something, he is making a declaration against

his interest. If I agree to wash your Honor's car, I am making a declaration against my interest. I am obligating myself. Now his conversation with Mr. Graham was a declaration against his interest that he had already made a promise to Mr. Remmer that he had loaned money and was doing was merely conferring with Mr. Graham, as the language would indicate, whether or not the representations that had been made to him by Mr. Remmer—he was committed to the promise to loan Mr. Remmer \$25,000—were true or untrue, in that Mr. Remmer stated he needed money to square up his account with Cal-Neva corporation, and he asked Mr. Graham if they were true or untrue and then in addition, in the same conversation, he asked Mr. Graham about how he would get the money back and Mr. Graham told him what he was doing, he would have to wait until Mr. Remmer either made money or sold the place, Mr. Graham saying, "That is the way we are going to get our money." Now the intervening conversation merely does show the existence of the obligation, the life of the obligation, still being alive. Now may I say very frankly to your Honor that as to the intervening conversation, in the occasions intervening between the first conversation in 1946, May or June, and the ultimate conversation in which he says the obligation has been cleared, I think is properly to be excluded as hearsay, because it is merely a matter of inquiry, "Where am I going to get my money?", no declaration of interest, so I believe that would properly be excluded. However, ultimately we find the situation

where Mr. Scarlett then being advised the money is now available and of the debts being paid out of the escrow—"I got mine. Go over to Woodburn's and get yours"—and this is all referring to the 1946 loan—and at that point Mr. Scarlett makes the declaration against interest, to wit, "I have already been paid." In other words, Mr. Remmer is no longer obligated to me, I have my money.

The Court: When was that conversation had, that he said he got his money?

Mr. Gillen: That was had in 1949, on March 2nd, when Mr. Graham and Mr. McKay collected their money.

The Court: Well, that was way after the time stated in the indictment.

Mr. Gillen: Well, that wouldn't make any difference. We have lots of things in this record after the time stated in the indictment but inclusion of matters that occurred during the indictment period.

The Court: I can't see where a conversation which began in 1946, was declaration against interest.

Mr. Gillen: May I point to another point in the same volume I just read to your Honor, Corpus Juris Secundum, Vol. 31 on Evidence. It says: "Thus the declaration is admissible \* \* \*"

The Court: This conversation only had to do with solicitation of advice of Mr. Graham whether he should make this loan.

Mr. Gillen: The 1949 conversation.

The Court: 1946. Let me get that 1949 conversation again.

Mr. Gillen: May I straighten out your Honor on 1946. If I said to your Honor, "I have just signed a contract, or entered into a contract, to build three houses" and at some later time, when I was incapable to go ahead, for whatever reason, and you were called upon to determine whether or not I had ever made a declaration against my interest, that I had obligated myself by contract or otherwise to do a certain thing, that would be a perfectly proper instance of a declaration against my interest. Now as to 1949, may it please the Court, the reverse is true. The man then says, "I am obligated to do something for some one," but the reverse is true in 1949—he says, "I no longer have an obligation against Mr. Remmer. I got my money. I am paid."

The Court: You said a little while ago that that was obviously hearsay, that later conversation?

Mr. Gillen: No, it is the exception. Now, your Honor, in regard to the 1949 conversation, your Honor will remember that Mrs. Badovinatz testified to something that occurred in February in 1947.

The Court: Yes.

Mr. Gillen: You remember she said in February, 1947, her husband said to her, "I am going to the bank to get a cashier's check to pay Bones Remmer back some money I owe him." She may have mentioned \$5,000, I don't recall. That was supplemented by records of the bank, showing on February 7, 1947, he did in fact purchase a cashier's check made payable to Mr. Remmer, which, of course, your Honor's ruling was perfectly proper, with the exception, and we still take the exception, that it does

not show whether the obligation was incurred during—

The Court (Interceding): We will postpone this argument now. I have three or four matters at one o'clock. We will be in recess in this case until quarter to two.

1:45 P.M.

(Defendant present. Jury absent.)

Mr. Gillen: Shall I proceed, your Honor?

The Court: Yes.

Mr. Gillen: May it please your Honor, to summarize the rule that covers the situation that confronts us here, may I respectfully invite your Honor's attention to *Corpus Juris Secundum*, Vol. 31, on the subject of "Evidence," the language found at page 959, Section 217. Under the heading of "Requirements for Admission of Declarations," we find the following language, based on summarization of what appears to be the universal rule. The language reads as follows (Reads.) Now, of course, we have that situation here. The declarant, it has been established, is deceased, therefore unavailable as a witness before this court. (Reads (2).) And we have that situation here. We have these three conversations, yes, more than three conversations, but we have the conversation of 1946, May, between Mr. Scarlett and Mr. Graham, Mr. Scarlett being the deceased declarant, in which Mr. Scarlett makes a declaration against his interest, to the effect that he has committed himself to make a loan, and then further conversation relates to the verification of



the representations that were made to him when the proposal of the loan was made and when his commitment to make the loan was obtained. Then there were intervening, as I pointed out to your Honor this morning, conversations that we referred to in the course of the next ensuing two years, which I said to your Honor quite frankly were not declarations against interest and should properly not be admissible conversations, wherein Mr. Scarlett asked Mr. Graham whether or not any money was available or whether Cal-Neva was going to be sold and when he could expect to get his money. Those were merely inquiries and I do not believe properly declarations against interest. And then finally we have the March, 1949, conversation, wherein Mr. Graham advised Mr. Scarlett that the money is now being paid out of the escrow and Mr. Graham has received his money and Mr. Scarlett should go and receive his, a declaration of Mr. Scarlett against his interest that he has already been paid the 1946 loan by Mr. Woodburn and that Mr. Remmer is no longer obligated to him. (Reads (3) from CJS.) Certainly Mr. Scarlett, having discussed these things, was cognizant of the facts relating thereto. (Reads (4).) The same general philosophy that is noted in denying declarations.

Now if I may invite your Honor's attention again to the second declaration, to the second ground—and I will read it again to your Honor: (Reads (2).) Now at page 963 we find a clarification of that second necessary ground and that clarification

is found in the following language: (Reads.) And that is the situation that we have here. In fact, we have both situations. The first situation, the conversation of 1946, Mr. Scarlett makes an acknowledgment or declaration of an indebtedness to another. In other words, by the commitment of agreeing to make the loan, he had obligated himself to fulfill his promise to Mr. Remmer to make the loan, and then in 1949, we have the reverse of the situation, where he acknowledges that the obligation has been paid, liquidated and paid and that the man to whom he made the loan was no longer obligated to him, that he had nothing coming on that account.

Now in regard, may it please the Court, to the sanctity of such things, as indicated in the fourth ground I mentioned to your Honor, we find this language which appears to amplify that rule, under the heading of "Statements Against Interest, Wigmore, Vol. 5, Section 1465," and I quote: (Reads.) In other words, boiling it down to ordinary straight language, it appears that the man at the time had no reason to tell any fibs, had no reason to lie about his own interest and his declaration, therefore, is true, would have the sanctity of being accurate and truthful, because there was no reason for it to be otherwise.

Now that is our situation, your Honor, and your Honor did mention this morning that the 1949 conversation a declaration of interest took place after the end bracket of the time period involved in the indictment, and I say to your Honor that that makes

no difference, for this reason—if the obligation was incurred within the time period of the indictment and was repaid, it would be practically a washed transaction; in other words, it would have no effect on net worth. A man has \$100 by borrowing within the time period and pays back \$100, it is a washed transaction because at the end of the year it hasn't changed his situation. It makes no difference. But it is where a situation arises where payment is made on an earlier obligation at a later date—and I again refer to the situation of Mrs. Badovintz, where the statement was made regarding the conversation that was held between her husband and herself in 1947, in February, some two months after the close of the indictment period December 31, 1946, and her husband said, "I am going to the bank to get a cashier's check—whether she mentioned the amount or not, I do not recall—to pay the money I owe to Bones Remmer," and I believe that he did in fact go and get a cashier's check and it was in fact made payable to the defendant in this case. So I say to your Honor that we have fully met the four requirements laid down by the universal rule.

Counsel has said something about another party to the transaction being present and this is not the best available evidence. It is not only the best available evidence, but it is the only evidence of the declaration. We are concerned here not with the facts so much as the declaration against interest. That is the concern of your Honor in your Honor's contemplated ruling. Now I know what counsel is talking about. He is talking about the possibility

that Mr. Remmer, having been present, that he could take the witness stand and testify whether he owed money or not. That is not the situation we are confronted with here. As a matter of fact, the witness could take the witness stand and say things that the other party to the transaction could deny, but here we have the other party to the transaction admitting, and admitting what? That he had agreed to and did lend money to the defendant and admitting that at a later time that he had been repaid the money and there was no further obligation. Now to whom did he make this declaration against his interest? To Mr. Remmer? No, to Mr. Graham, and Mr. Graham is not only the best available evidence, but the only available evidence as to those two conversations, because they were made directly with Mr. Graham by the deceased declarant, and we submit, your Honor, having met all requirements and being so closely related, except in a stronger position than that in the case of Mrs. Badovintz, that both conversations should be admitted from the Witness Graham.

Mr. Campbell: May I be heard very briefly, your Honor?

The Court: Yes, sir.

Mr. Campbell: It seems to me that we may be losing sight of the ultimate fact which counsel apparently is attempting to prove here.

I understand from counsel's statement that he is attempting to prove that a loan was made by Mr. Scarlett, or Mr. Sullivan as he was known in a business sense, to Mr. Remmer in 1946, which loan was

subsequently repaid in 1948, or 1949—1949. Now in support of that contention he is offering these declarations purportedly made by Mr. Scarlett to Mr. Graham.

What do those declarations amount to? In the first place, the first conversation, the one occurred in 1946, according to the offer of proof, is Mr. Scarlett says to Mr. Graham: "I am thinking about, or considering, making a loan."

Mr. Gillen: He said, "I promised to make a loan."

Mr. Campbell: That is not my understanding.

Mr. Gillen: Well, let us read the record.

Mr. Campbell: Well, whatever it is, at any rate he was contemplating a loan which had not been made at that time and he was inquiring, according to the offer, as to the repayment—

Mr. Gillen: I think counsel is misquoting the offer, and if counsel is going to do that, it is going to be confusing and we ought to have the offer of proof read.

The Court: I take it the offer of proof is that Mr. Scarlett stated he had promised to loan the money.

Mr. Gillen: Yes, your Honor.

The Court: I understand that.

Mr. Campbell: Supposing the testimony would be that Mr. Scarlett told Mr. Graham, "I have promised Mr. Remmer that I am going to loan him some money," now is that a statement against pecuniary interest? It is not a statement which in and of itself would bind legally Mr. Scarlett to loan

money. It might be corroborative of evidence, if it were available, that such a promise had been made to Mr. Remmer, but that is not what this evidence is. He says: "I promised to loan him this money. What are my chances to get it back?" Then at a later date he tells Mr. Graham, "I got my money back. Mr. Remmer doesn't owe me any longer." He can testify to the ultimate facts, but to prove the loan and the date upon which it was made, none of this is in the offer of proof through Mr. Graham. From that conversation it does not follow that the loan was made or that it was contemplated in that conversation, nor that the loan was made in 1946.

Now I think this is true—take, for example, a conversation as between the two individuals—the primary evidence of what took place in that conversation must be obtained from the participants themselves.

Mr. Gillen: That is in contradiction to the rule.

Mr. Campbell: May I finish my argument, Mr. Gillen.

Now as to whether or not a loan was made and when it was made and whether or not the documents which have been marked for identification here would show the assignment of some \$25,000 in 1949, to Mr. Scarlett relates to a loan, the primary evidence of that loan, the terms under which it was made, the conditions surrounding it, is necessarily the testimony and evidence of the parties to the transaction. Now it is true that one party to that transaction is deceased. His testimony is not available. The conversation he had with Mr. Graham

does not supply the ultimate fact sought to be proved here, as to whether or not, after that conversation, a loan was consummated and was consummated in 1946. However, if such loan were made, as I stated before, the direct evidence of the making of the loan and when it was made and the conditions surrounding it is available to the defendant, so that it is not necessary to resort to hearsay evidence in the first place, and in the second place, it does not render hearsay evidence admissible, and in the third place, the evidence relative to the conversation in 1946, does not meet the requirements as set forth in law as read by Mr. Gillen.

Now a statement—for example, let us take it a step farther and say that Mr. Scarlett said in 1946, that “Remmer owes me \$25,000,” or Remmer owes me \$50,000 or \$100,000. That is not a statement against pecuniary interest of Mr. Scarlett. That is a statement in favor of his pecuniary interest, which is the ultimate fact that counsel is attempting to prove, that Mr. Remmer did owe Mr. Scarlett \$25,000.

Now as to the conversation in 1949, if that is admissible—that is to say, the conversation in which Mr. Scarlett stated, “I have now received my money”—if that is admissible under the provisions of the exception to the hearsay rule, nevertheless it, standing alone, would be immaterial, unless it were shown that the conversation related to a loan which had been made in 1946, and which was an outstanding indebtedness as of December 31, 1946, none of which matters this conversation purports to supply;



and I, therefore, renew the objection to the proffered evidence upon the grounds that it calls for hearsay and is not within any exception to the hearsay rule, and secondly, that the proffered testimony is immaterial to the issues before this Court.

Mr. Gillen: May I be heard in reply to counsel.

May it please the Court, what counsel is trying to say, is trying to enforce upon your Honor, is something that is at cross-purposes with the problem that confronts your Honor at this time. In other words, he says if there is a party to the transaction living and available, then you can never use a declaration against interest, which is not the fact. What he is trying to say, the defendant is here, so the defendant, if he wants to prove that, has to take the stand and prove it himself. Now, as a matter of fact, the jury might not believe the defendant, the jury might not be as willing to accept the defendant's testimony concerning the fact that he had borrowed \$25,000 at a time when it was very important for him to acquire \$25,000, or any amount of money, they might be less willing to receive and believe such testimony coming from the defendant than to believe testimony of a disinterested witness who comes here and says that the party to the transaction on two different occasions when there was no rhyme or reason for him to make these declarations against his interest to him concerning his obligations to or obligations from the defendant in this case. The problem that concerns your Honor here is whether or not declarations against interest have been made and meet requirements that have been



summarized here as the universal rule, not the fact whether the transaction took place or how many parties may be living to the transaction or whether or not we have presented here, in the person of Mr. Graham, the best available witness and evidence as declaration against interest made by a declarant who is now beyond the reach of the court by reason of his demise.

Counsel says another thing. Counsel says there is no evidence of when the obligation was incurred. Well, in the Badovinatz matter, there was no evidence when the obligation was incurred, either. That does not make any difference, but as a matter of fact, we have offered here by declaration against interest, we offer these two conversations in which reference is made to when the obligation was incurred, to wit, in 1946, and that attaches itself to a specific milestone in this chain of events, that milestone being the occasion when Mr. Graham and Mr. McKay were selling their interests to Mr. Remmer and when it became necessary for all of them to raise some money to pay their outstanding accounts to the corporation, so there was the milestone in connection and the reason why Mr. Remmer borrowed \$25,000. He probably borrowed money from other people to meet the \$70,000 obligation to the corporation.

Now counsel also mentioned that this 1949—I don't quite follow—conversation standing alone meant nothing. Well, I disagree with him that it means nothing. It is a declaration against interest

by a deceased person, related by a disinterested person not a party to the transaction——

The Court (Interceding): You must keep in mind Mr. Scarlett did not tell Mr. Graham about a loan. He told him he contemplated a loan.

Mr. Gillen: That is correct.

The Court: There is nothing in any conversation of Mr. Scarlett's that would indicate whether or not he ever did loan money.

Mr. Gillen: In 1949, there was, your Honor.

The Court: He said he got some money, but nothing in the conversation of Mr. Scarlett's that would show that in 1946, he loaned any money to Mr. Remmer.

Mr. Gillen: In 1946, it is true he did say, "I loaned," he said, "I have agreed, or promised, to loan money, \$25,000." He further inquired as to the truthfulness as to the representations, he said, "He said he needs it for Cal-Neva, is that true?" Mr. Graham assured him the money was needed for Cal-Neva by the three stockholders, then he said something to the effect about when he would get the money back and Mr. Graham said, "When he makes money or Cal-Neva is sold."

There were intervening conversations, concededly not declarations against interest, merely inquiries, but the next conversation in 1949, that the money is made available in escrow, ready to be paid, Mr. Graham gets his money, Mr. Graham goes to Mr. Scarlett and says to him, "I just got my money. If you want to get your money on the loan you made in 1946, go over to the lawyer's office and get it,"

and Mr. Scarlett didn't say, "I didn't loan any money in 1946," or anything of the sort. Mr. Scarlett said, "I have already been taken care of. Mr. Woodburn has already given me my money," or "I have already got my money from Woodburn. It has been paid." Supplementing that we have the transaction in Mr. Woodburn's office, the same amount, we have the assignment out of the proceeds of the escrow in the Adler transaction, prepared by Mr. Woodburn in his office, wherein Mr. Remmer directs the escrow trust department of the bank to pay out of the first money that comes in from Adler to Mr. Scarlett the sum of \$25,000. We have the check that was paid, bearing the same date as Mr. Graham got his money, March 2, 1949, for the same amount, \$25,000, and Mr. Scarlett's receipt and release to the escrow or trust department that he had received that money, his endorsement on the check, check made payable to him, endorsed by him, and the check obviously has been cancelled, paid off. And I say, your Honor, that we have met every single requirement under the rule and that both of these declarations against interest should go before the jury, and we say the position we are in here is much stronger than the position in which we concede your Honor was right in allowing the declaration in the Badovinatz matter.

The Court: Objection will be sustained. Call in the jury.

2:20 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. GRAHAM

resumed the witness stand on further

Direct Examination

By Mr. Gillen:

Mr. Gillen: In view of the Court's ruling, I take it I can not pursue the subject that left at the recess taken by the Court this morning.

The Court: No.

Q. Now, Mr. Graham, you previously testified, it is my recollection, that you, in the year 1946, loaned to Mr. Remmer the sum of ten thousand dollars in the form of a check, which loan was paid back in either 1947, or 1948, do you recollect that?

A. Correct.

Q. Do you have the check that you issued to Mr. Remmer with you? A. Yes, sir.

Mr. Gillen: May I see it, please? May I have this marked for identification?

Q. Mr. Graham, you handed me your check that you issued in favor of Elmer Remmer on February 2, 1946, for the sum of ten thousand dollars?

A. Yes, that is the check.

Mr. Gillen: I offer this check, may it please the Court, [2638] as defendant's exhibit next in evidence.

(Testimony of William Graham.)

Mr. Campbell: No objection.

The Court: It may be admitted, H-1.

Mr. Gillen: The exhibit is now known as Defendant's Exhibit H-1. With the Court's permission, I shall read it to the jury.

The Court: Yes, sir.

Mr. Gillen: (Reads Exhibit H-1.)

Q. Now, Mr. Graham, were you acquainted, during his lifetime, with a man by the name of Robert Jeffers? A. Yes.

Q. Mr. Graham, directing your attention to the month of July, 1947, do you have a recollection of having telephoned long distance to Elmer Remmer concerning Mr. Robert Jeffers? A. Yes.

Q. And what was the occasion of your calling Mr. Remmer concerning Robert Jeffers at that time? A. He owed the Bank Club.

Q. How much money did he owe the Bank Club?

A. Twenty some thousand dollars.

Q. Who was it that owed the Bank Club twenty some thousand dollars? A. Bob Jeffers.

Q. Let me ask you, does it refresh your recollection that it was twenty-three thousand? [2639]

A. Twenty some thousand, I don't know.

Q. What was your conversation with Mr. Remmer on that occasion concerning the twenty some thousand dollars that Mr. Jeffers owed the Bank Club?

Mr. Campbell: Objected to as incompetent.

The Court: Objection sustained.

(Testimony of William Graham.)

Mr. Gillen: I do not think it is incompetent, your Honor. It is further evidence supporting the matter that is already before the jury, that was brought out from the prosecution's witness, namely a Mr. Perkins, who was the bookkeeper or accountant for the Bank Club. Your Honor will recall Mr. Perkins testified concerning—

The Court (Interceding): We had better have our arguments in the absence of the jury.

Mr. Gillen: This is not an argument, just calling your Honor's attention to some testimony that has gone before the jury.

The Court: The ruling will stand. If you want to argue, I will give you an opportunity.

Mr. Gillen: I am sorry to discommode the jury, but it is important.

(Jury and alternate jurors admonished and excused at 2:25 p.m.) [2640]

(In the absence of the jury.)

RE: CHECK FROM BANK CLUB

(Febr. 7, 1952—Notebook 341—P.P. 50-57.)

Mr. Gillen: May it please the Court, as your Honor knows, the introduction of evidence on the subject matter or topic is not like the one-horse shay, it can not all be done at once; I mean, it must be presented as points are presented.

I will remind your Honor there appears—and that is what I said in argument before the jury only making reference to testimony already in the

record and heard by the jury—your Honor will recall that the prosecution called to the witness stand Mr. Perkins, who was accountant at the Bank Club, and Mr. Perkins gave testimony concerning the issuance of a Bank Club check to Elmer Remmer in the sum of \$29,979, which money was to pay for certain Burton & Gallagher whiskey. Your Honor will recall that he testified that that check was required to be and was endorsed and cashed at the Bank Club by Mr. Remmer and that there was retained by the Bank Club out of that 29 thousand dollar check the sum of 23 thousand dollars to cover an obligation by Mr. Jeffress to the Bank Club for 23 thousand dollars which Mr. Remmer had previously agreed to underwrite.

Now, the testimony that I am seeking from Mr. Graham now is merely rounding out the picture of that particular transaction, wherein Mr. Jeffress, it will appear, had been gambling at the Bank Club and desired to put in a marker for some money and he wanted to put in markers to the extent of 23 thousand dollars and he stated to Mr. Graham, who was called up to OK whether this should be done or not, that Mr. Remmer owed him in excess of 23 thousand dollars. This grows out of the 50 thousand dollar loan. That evidence is before the Court, the promissory note for \$50,000 that was testified to here and introduced, that Mr. Graham, to substantiate the representation, telephoned long-distance to Mr. Remmer and stated to Mr. Remmer, "Bob Jeffress is here. He says you owe him more than 23 thousand dollars. He wants to put in markers. Will

you stand good for it?" and Mr. Remmer acknowledged his indebtedness to Mr. Jeffress in excess of 23 thousand dollars and agreed to stand good for it and that thereafter—this telephone conversation was had in July of 1947, obviously prior to July 30, 1947, because the check that we have in evidence under designation of plaintiff's 147A, bears the date of July 30, 1947, and then we have the testimony, as I have stated, of Mr. Perkins that that check was presented to Mr. Remmer for his endorsement, was cashed, 23 thousand dollars retained out of it to cover Mr. Remmer's underwriting of the Jeffress obligation, and that Mr. Remmer was given the difference on that check. Now, it is competent, relevant, and material and in verification of the entire transaction.

The Court: What do you expect to receive in the way of answer to this question? What do you intend to prove?

Mr. Gillen: I intend to prove, may it please the Court, in further substantiation of the fact that Mr. Remmer had borrowed \$50,000 from Mr. Jeffress and that was the \$50,000 needed for the Cal-Neva account, that \$50,000 was still outstanding, or outstanding at least to the extent of \$23,000, in July of 1947, and, of course, that would affect the net worth as of the end of December, 1946; and that Mr. Graham will testify that he in effect said, "Jeffress says you are obligated to him for more than 23 thousand, he owes us 23 thousand, or wants to become obligated to us—will you stand good for it," and Mr. Remmer said, "Yes, I owe him more than



23 thousand and I will stand good for it. Give it to him and I will pay it," and that he did in fact pay.

The Court: I would suggest you propound this question to this witness and see what his answer is in the absence of the jury.

Mr. Gillen: All right.

Q. (By Mr. Gillen): Mr. Graham, in the month of July, 1947, did you have a long-distance telephone conversation with Mr. Remmer concerning Mr. Robert Jeffress? A. Yes.

Q. Will you just relate to the Court what the telephone conversation was with Mr. Remmer, what you said to him and he said to you?

A. I asked him—I said, "Bob Jeffress is in heavy, in some 20 thousand dollars, and I spoke to Mr. Jeffress and he says 'Bones owes me more than that,' " so I said, "Do you owe him?" He said, "Yes, I owe more than that to him; I will stand good for it."

Q. Did you mention the amount?

A. Twenty thousand, because I tried to stop Bob at ten thousand and tried to stop him at 15 thousand and he wouldn't stand for me stopping him.

Q. And Mr. Remmer said he owed Jeffress money and he would stand good for it?

A. Yes.

The Court: That conversation was with Mr. Remmer?

Mr. Gillen: Yes, your Honor.

The Court: What is your objection to that?

Mr. Campbell: My objection is that it is incompetent, if the Court please.

The Court: Just what do you mean? On what grounds?

Mr. Campbell: And further it is immaterial. This conversation is certainly, in the first place, not the best evidence of an obligation or the fact an obligation did exist or that if an obligation existed, that it existed as of December 31, 1946. That is the basis for my objection. I think further it is a self-serving declaration under the circumstances.

The Court: Fix the time of that conversation.

Mr. Gillen: I fixed it as of July, 1947, prior to July 30, 1947, which is the date Mr. Remmer made good the obligation of 23 thousand dollars out of this check, prosecution's Exhibit 147A.

Would your Honor care to hear on the other factors? Counsel stated a couple of things I think are misleading. In the first place, he said this was no evidence of indebtedness. As a matter of fact, your Honor, we have before your Honor evidence of the indebtedness in the form of Mr. Remmer's promissory note, dated in September of 1946, for the sum of \$50,000 to Mr. Jeffress. Then we have—and counsel said it would be irrelevant—of course your Honor can readily see the relevancy—if the entire obligation was paid before December 31, 1946, as I mentioned in the other offer, it would then be a washed transaction, the money would have been obtained during the year and paid back during the year and leave nothing, it would be balanced off, evened up, but the obligation still existed at December 31, 1946, the closing date of this indictment, and it is very evident that the obligation still existed at

that time because Mr. Jeffress tells Mr. Graham that Mr. Remmer owes him that amount of money, and Mr. Campbell then says it is a self-serving statement, and he mentioned that as an afterthought, on Mr. Remmer's part. Well, may it please the Court, it is certainly not self-serving statement at the time it was made. It may prove to be self-serving in character now but at the time it was made it was not certainly self-serving, when Mr. Remmer said, "Sure, give him 23 thousand and I will stand good for it." That was admission of an obligation to a man in the sum of 23 thousand dollars. That was a statement against interest at that time.

The Court: I am going to permit you to ask this question.

Mr. Campbell: May I make one observation?

The Court: Yes.

Mr. Campbell: I wish to point out to the Court that in this instance, for example—and I presume it may occur in subsequent instances—it is an attempt, or it would be if allowed, the testimony of a witness to be entered without that witness taking the stand. Now, if this is used to establish the obligation, there is no manner in which cross-examination can be had——

The Court (Interceding): I think so. There would be no opportunity to cross-examine the witness who is in effect testify. Mr. Remmer is testifying through Mr. Graham.

Mr. Gillen: Not at all, your Honor. There is Mr. Remmer's note here before the Court. There is a testimony from a prosecution witness——

The Court (Interceding): We are getting something in this record, to the effect Mr. Remmer's statement in this record that he owed 23 thousand dollars to this particular individual, without having Mr. Remmer on the stand or an opportunity to cross-examine.

Mr. Gillen: No, there is more than that. May I respectfully say this to your Honor. It is my recollection——

The Court (Interceding): I think it is hearsay testimony.

Mr. Gillen: No. May I show your Honor the transcript of Mr. Perkins' testimony. Your Honor, if I am not very badly mistaken, Mr. Perkins testified as to the reason for withholding of that 23 thousand dollars from the \$29,000 Burton & Gallagher check; namely, that Mr. Remmer had gone good for an obligation of Mr. Jeffress, and this is merely filling that out, the circumstances under which he did that.

Another thing, your Honor—I think we lose sight of, and I think I can demonstrate to your Honor the foolishness of Mr. Campbell's last remark—Mr. Remmer may not go on this witness stand in this trial and testify that he told Mr. Graham that he was obliged to Mr. Jeffress in excess of 23 thousand dollars and that he would go good for him. That would certainly be counsel's example of self-serving statement for Mr. Remmer to take the witness stand and say——

The Court (Interceding): Suppose Mr. Remmer did testify he borrowed 50 thousand dollars,

wouldn't he also be allowed to testify as to whether he paid him back and if he paid it, or any portion of it, wouldn't he be able to explain how he paid him back?

Mr. Gillen: I suppose he would, yes, but we have here evidence from a disinterested witness, interested only to the extent of getting that money, regarding this matter and this situation was introduced not by us, but by the prosecution, that there had been issued to Mr. Remmer a 29 thousand dollar check, and then their own witness explained 23 thousand was withheld because Mr. Remmer had gone good on an obligation for Mr. Jeffress. Now, Mr. Graham is here to testify from first-hand knowledge——

The Court: I would like to look at Corpus Juris on the question of self-serving declarations. We will take a recess until three o'clock. Recess taken at 2:40.

2:55 P.M.

(Defendant present.)

(Jury absent.)

The Court: The objection is sustained. If the Court ruled otherwise, it would be permitting Mr. Remmer to testify without sanctity of a note or subjecting himself to cross-examination.

Mr. Gillen: I think we found some testimony, your Honor, where there was reference made——

The Court: Yes, but I have my mind made up about this matter. I am not going to allow Mr. Remmer to testify from the mouth of another witness.

Mr. Gillen: No, the testimony of Mr. Perkins—testified to the obligation. Would your Honor listen to it? It is very short.

The Court: Yes, but it wouldn't make any difference as to the admissibility of this question, would it?

Mr. Gillen: Mr. Perkins testified that he withdrew this—well——

The Court: The ruling will stand. Call in the jury.

3:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. GRAHAM**

resumes the witness stand.

Mr. Gillen: In view of the Court's ruling, no further questions of Mr. Graham.

**Cross-Examination**

By Mr. Campbell:

Q. Mr. Graham, referring to the check which you produced here, relative to the ten thousand dollar loan which you made in 1946 to Mr. Remmer, and concerning which you also testified when you appeared here before, is that correct?

A. Yes.

Q. At that time I do not believe you had the check with you, is that right?

(Testimony of William Graham.)

A. Yes, I had the check with me. You told me to bring everything I had in the case.

Q. Now, calling your attention to the check and to the notations appearing on the back, the signature Elmer Remmer and the memorandum here C-CK 75107378, and particularly calling your attention to that last notation, was that on there when you received the check back from your bank?

A. I didn't notice that. I never paid any attention to that. I don't know whether that was on there; I don't know anything about it.

Q. That wasn't a number which you placed on there? [2641]      A. No.

Mr. Campbell: This CK usually refers to cashier's check.

Mr. Gillen: CK refers to cashier check, I don't think so.

The Court: I think we have a lot of matters in there we are not interested in.

Mr. Gillen: I do not think counsel can characterize what it means. It is some kind of notation.

Mr. Campbell: Well, I withdraw the statement.

Q. Now, Mr. Graham, when was this loan paid back to you?

A. Well, paid back in '48, some of it paid back and some cash and some paid back I owed.

Q. That you owed?

A. A friend of mine rang me up from San Francisco and wanted me to loan him five thousand dollars. He said, "I am selling some bonds and will send it in a few weeks" and then—it was during

(Testimony of William Graham.)

the racing season—I said, “You go over to Mason Street and see Bones and I will ring him up and tell him to give you five thousand,” it was Bill Hervey, and he went over to Mason Street and Bones gave him the five thousand.

Q. When was that?

A. That was in '48 during the racing. In the meantime, I rang up and told Bones to bet some horses for me, around three thousand dollars, and then when I went to San Francisco he gave me the difference to make up ten thousand dollars, in cash, so [2642] that is how I was paid back.

Q. In other words, you gave him credit that he paid out for you around eight thousand?

A. Yes, sir.

Q. And the balance you got in cash?

A. I think \$1,750 in cash; I am not quite sure. That is how I got it.

Q. That repayment all took place in 1948, is that right?      A. Yes.

Mr. Campbell: That's all.

Mr. Gillen: No further questions.

(Witness excused.)

Mr. Gillen: We might facilitate another matter. In view of the Court's rulings, it will be impossible for us to further examine Mr. Woodburn and unless Mr. Campbell would desire to cross-examine Mr. Woodburn insofar as he testified yesterday, there is no necessity of discommoding him and bringing him back.



Mr. Campbell: I have no cross-examination.

The Court: I understand Mr. Woodburn may be excused, is that satisfactory? A. Yes.

The Court: He may be excused.

Mr. Gillen: In relation to Mr. Vacchina, the trust officer who appeared here yesterday and identified certain [2643] records and photostatic copies in for identification, we are unable, in view of the Court's rulings, to proceed further with him and are willing he be excused, unless Mr. Campbell desires to cross-examine him.

Mr. Campbell: I did not understand the first part of counsel's statement. If counsel is withdrawing——

Mr. Gillen: We are not withdrawing, we are unable to proceed with further examination.

The Court: I think the effect of it, in view of the rulings he says there is nothing to be gained by calling him.

Mr. Gillen: That is right.

Mr. Campbell: I have no cross-examination.

The Court: Then Mr. Vacchina may be excused.

#### VERN WALDO

a witness on behalf of the defendant, being duly sworn, testified as follows:

#### Direct Examination

By Mr. Gillen:

Q. Will you state your full name, please?

A. Vern Waldo.

Q. Where do you reside?

(Testimony of Vern Waldo.)

A. In Reno, 46 Raymond Drive.

Q. Will you state what is your business?

A. Assistant cashier First National Bank of Reno, Reno, Nevada.

Q. Have you been with that bank for some period of time? [2644]

A. I have been with them three years.

Q. And as assistant cashier of that bank, are the commercial accounts under your direct supervision? A. That is correct.

Q. And you have access to them in the ordinary course of your business as assistant cashier, is that correct? A. That is correct.

Q. Were you subpoenaed to appear here to bring with you certain records of the commercial account of Cal-Neva Lodge?

A. That's right.

Q. Will you produce the originals of those records, please?

Mr. Campbell: Did you say Cal-Neva Lodge or Cal-Neva, Inc.?

Mr. Gillen: I think it is Cal-Neva Lodge on the account.

Q. May I ask if you have photostatic copies of these original documents? A. Yes, I have.

Mr. Campbell: I have no objection to using photostats.

Mr. Gillen: I wonder if I may inquire through the Court of counsel if there is any objection, they having examined them, to offer photostats in lieu of the original of these bank statements?

(Testimony of Vern Waldo.)

Mr. Campbell: No, no objection.

Mr. Gillen: I will offer then as an exhibit or exhibits, however it serves the convenience of the Court, six [2645] sheets of photostats and will have them marked in whatever manner that may be convenient. When I say six sheets, may it please the Court, one of those sheets is made to represent the reverse side of the ledger sheet, so really five sheets if that is called one sheet together.

The Clerk: Exhibit I-1.

Mr. Gillen: We offer them in evidence.

Mr. Campbell: No objection.

The Court: Admitted in evidence, I-1.

Mr. Gillen: It might be advisable, your Honor, before counsel cross-examines, so the jury will follow the evidence, that I read them to the jury, with the Court's permission.

The Court: Yes, certainly.

Mr. Gillen: (Reads first sheet of exhibit.)

Q. I take it, Mr. Waldo, that that document is a telegraphic order written in code, is that correct?

A. That is correct.

Mr. Campbell: I will stipulate there is a document giving the full translation of that document.

Mr. Gillen: The next document of the exhibit is entitled "Translation of telegram received from Bank of America National Trust and Savings Division, Day and Night Branch, San Francisco, California." (Reads document.)

Q. That means it was transmitted by teletype, is that correct? A. Correct. [2646]

(Testimony of Vern Waldo.)

Mr. Gillen: The message reads as follows:  
(Reads from exhibit.)

Q. "Col. Dept.," that means Collection Department, does it not? A. That is right.

Mr. Gillen: (Continues reading exhibit.)

Q. Now that means, does it not, that your bank received from the Bank of America, Day and Night Branch, an order to put into the account of Cal-Neva account, as per instructions of Elmer F. Remmer, the sum of 50 thousand dollars?

A. That is correct.

Q. That is what you call in banking terms a telegraphic transfer of funds? A. Yes.

Q. In other words, the Bank of America in San Francisco stood good for that order that you followed, is that correct? A. That is correct.

Mr. Gillen: Now the next document in this exhibit reads: "Main Office Branch No. —" (Reads.)

Q. "TT," I take it, Mr. Waldo, would mean telegraphic transfer? A. That is correct.

Mr. Gillen: (Continues reading from exhibit.) And there are numerous transactions reflected, which I will not take the time of the jury or the Court to read, but there appears at the top of the sheet, on the face of the sheet, under date [2647] September 28, 1946, a deposit of 50 thousand dollars, and I take it, Mr. Waldo, that would be a reflection of the telegraphic transfer and transaction referred to before? A. That is correct.

Mr. Gillen: I think that is all.

(Testimony of Vern Waldo.)

Cross-Examination

By Mr. Campbell:

Q. Mr. Waldo, do you by any chance have the signature card of this account with you?

A. Yes.

Q. And that is the card which you have produced, which you just handed me, the signature card referring to the account, the ledger sheet of which is in evidence as Defendant's Exhibit I-1?

A. Yes.

Q. Do you have a photostatic copy of this?

A. No, sir.

Q. Can you supply a photostatic copy of this, Mr. Waldo?      A. I can.

Mr. Gillen: No objection to its being put in evidence.

Mr. Campbell: I am going to offer this in evidence with the request that it be withdrawn and returned to this witness if he will send down a photostatic copy of the document, and we will leave the original here.

Mr. Gillen: We will be agreeable and will be glad to bring it over from Reno, if that will facilitate matters when [2648] Mr. Waldo photostats it.

The Court: Is that marked in evidence?

Mr. Gillen: We have no objection to the exhibit being withheld until the photostat arrives.

The Court: We will give it a number, Exhibit 185. The photostat will be admitted when it is produced.

(Testimony of Vern Waldo.)

Mr. Gillen: Yes, your Honor, no objection.

Mr. Campbell: Reading from this exhibit, shows the account as having been opened on 9-29-46; there are signatures appearing thereon, being that of Elmer Remmer, James B. Jeffers and Harold H. Maundrell.

Q. Now referring to the ledger sheet, which is a portion of Defendant's Exhibit I-1, I call your attention to the fact that the name of Harold Maundrell, Crystal Bay, Nevada, has been scratched out and in pen and ink written 541 Elko Avenue, Reno. Do you know when that change took place in that account? A. I can't answer that.

Q. Do you know whose writing that is?

A. No, I do not.

Q. Do you recognize it as the writing of any of the bank boys? A. No.

Q. Do you have anything in your file that you have with you indicating the time at which that change was made? A. No, sir.

Q. Now your attention has been directed to the deposit as [2649] shown by the deposit book on the ledger sheet of 50 thousand dollars by telegraphic transfer on September 28, 1946. That is the 50 thousand dollar item I believe you identified under the heading of "Deposits" on September 28, 1946, is that correct? A. That is correct.

Q. And at that time the balance in the account, with that 50 thousand dollars, amounted to \$50,-994.35, is that correct? A. That is correct.

Q. Now I direct your attention, under date of

(Testimony of Vern Waldo.)

October 1, 1946, there is shown a withdrawal of 50 thousand dollars as one of the items withdrawn on that date, is that correct?      A. That is correct.

Q. And that resulted in an overdraft, that together with another item drawn on that date of \$3,379, resulted in an overdraft of \$5,320.71, as of the close of business October 1, 1946, is that correct?

A. That is correct.

Q. This ledger sheet further shows, does it not, that overdraft continued until October 26th, at which time a deposit was made in the account of some \$47,300, is that right, sir?

A. That is correct.

Q. When I say "overdraft," I mean to say an overdraft continued in the account, did it not, because other items were also charged against the account? [2650]      A. That is correct.

Q. Now I draw your attention to that deposit of \$47,300 on October 26, 1946, and also to the next deposit on December 7, 1946, of \$78,634.29. I will ask you if you have with you the deposit slips relating to those two deposits?

A. I do not, Mr. Campbell.

Q. Would it be possible for you, Mr. Waldo, to secure those slips, have photostats of them made at the same time you have the photostat made of the signature card?      A. We can do that.

Q. Will you do that?      A. Yes, sir.

Mr. Campbell: That is all.

(Witness excused.)

MARYCE CHANEY MARTIN

a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination

By Mr. Gillen:

Q. Will you state your full name, please?

A. My full name is Maryce Chaney Martin.

Q. Where do you reside, Mrs. Martin?

A. I live in Beverley Hills, California.

Q. Can you give us the address?

A. 311 North Alpine Drive.

Q. With whom do you live?

A. My husband and two small children. [2651]

Q. What is your husband's name, please?

A. Hershey Martin.

Q. What is your husband's business?

A. He is a theatrical booking agent, for the William Morris Agency.

Q. That is a national theatrical booking agency?

A. Yes.

Q. And he is a member of the Act Department for that agency in this area?

A. Yes, that is correct.

Q. His activities in that capacity take place not only in California, but Nevada?

A. Yes, and up north, Washington, all of the West Coast.

Q. Prior to the time that you began devoting your time to your home and two small children, did you have a profession or business calling of your



(Testimony of Maryce Chaney Martin.)

own? A. Yes, I was a professional dancer.

Q. Did you do any other type of work than professional dancing yourself?

A. Yes, I produced my dancing girls.

Q. Did you also engage in some other business enterprise with your husband in connection with the theatrical business?

Mr. Campbell: Objected to as immaterial.

The Court: You may answer.

A. My husband had a theatrical booking agency of his own at [2652] one time in San Francisco and I assisted him.

Q. Now, Mrs. Martin, are you acquainted with the defendant in this case, Elmer F. Remmer?

A. Yes, I have known Mr. Remmer for about 13 or 14 years. He has been a very tried and true friend to me.

Mr. Campbell: I ask the last be stricken as not responsive.

The Court: It may go out.

Q. Under what circumstances did you first meet Mr. Remmer?

A. I worked at Cal-Neva Lodge. I believe I started in December of 1938, but I am not sure of the exact date.

Q. And did you in the ensuing years produce the shows at Cal-Neva Lodge?

A. I helped to do that, yes.

Q. Now in the years 1943, and 1944, did you ever borrow any money from Mr. Remmer?

(Testimony of Maryce Chaney Martin.)

A. Yes, I did.

Q. Can you tell us when in 1943, you borrowed money from Mr. Remmer and when in 1944?

A. Well, I believe it was around September or October of 1943, and again in 1944, about the same time. I am not sure of the exact dates.

Q. And you were married when?

A. I was married in August, 1943; August 17, 1943.

Q. What was the amount that you borrowed, as you fix it, in [2653] September or October of 1943?

A. I borrowed \$2,500.

Q. What was the amount that you borrowed, as you fix it, approximately the same time in 1944?

A. \$2,500.

Q. Now do you recall in what form that money was given to you?

A. Well, I believe once it was given to me in the form of a check, once in cash, but I can't tell which time it was given in cash and which time in the form of a check, I am not sure.

Mr. Gillen: Now I have a cancelled check I would like marked for identification.

The Clerk: J-1.

Q. I am going to ask you, Mrs. Martin, under what name were you known at the time you worked as a professional dancer and also in the course of time you worked at Cal-Neva Lodge?

A. I was known as Maryce Chaney.

Mr. Thompson: I have no objection to this check.

(Testimony of Maryce Chaney Martin.)

Q. Let me ask you this, Mrs. Martin, I will show you here Defendant's Exhibit J-1. I will ask you to look at this and tell me whether or not this refreshes your recollection as to which occasion of the two occasions mentioned of the \$2,500 that you borrowed from Mr. Remmer that you received the loan in the form of a check?

A. Well, yes, I received the cash in 1943, and the check in '44.

Mr. Gillen: There being no objection from counsel, I [2654] offer the check in evidence as next in order.

The Court: Admitted in evidence, J-1.

Mr. Gillen: With the Court's permission, I would like to read the check.

Q. Mrs. Martin, I take it, that the reason you say your memory is refreshed looking at this check, that the check bears the date of August 30, 1944?

A. That is right.

Q. And you identify then that is the occasion on which you received the \$2,500 loan by check?

A. That is correct.

Mr. Gillen: I might say to your Honor, so there may be clarification concerning this particular exhibit, this was withdrawn from the box that was brought into court at the Court's direction and removed from the Cal-Neva papers from the box in custody of the clerk of the Court. \* \* \* I misidentified these—these were corporate records of Cal-Neva brought in voluntarily. This check reads as follows: (Reads exhibit.)

(Testimony of Maryce Chaney Martin.)

Q. Now, Mrs. Martin, the \$2,500 which you borrowed in, I believe you said September or October of 1943, and the \$2,500 that you borrowed August 30, 1944, did you repay those amounts to Mr. Remmer?

A. Oh, yes.

Q. When, do you recall, did you pay the 1943 loan, or if you [2655] did not pay it all at once, when did you start to pay the 1943 loan?

A. Well, I believe, to the best of my knowledge, that I started in 1944, I started paying that probably in 1944. I am not sure of the date.

Q. Did you pay that first \$2,500 loan all at once?

A. No.

Q. What is your best recollection now as to in what manner you paid that loan?

A. Well, my husband paid it off gradually. We tried to pay so much—sometimes it may have been \$200 or sometimes more or a little less and at that time there may have been larger sums, but I am not sure, I can't remember.

Q. Then on August 30, 1944, you borrowed another \$2,500?

A. That is true.

Q. What is your best recollection now as to whether or not you had completed your payments of the indebtedness of the first \$2,500 before you borrowed the second \$2,500?

A. I do not think it was completed. I do not think we completed; as best I can remember, the entire amount by January, 1946, and the reason I remember that is that I had a baby in January,

(Testimony of Maryce Chaney Martin.)

1946, and we planned on getting our debts straightened out by that time.

Mr. Gillen: I think that is all. [2656]

### Cross-Examination

By Mr. Campbell:

Q. Now as I understood your testimony, Mrs. Martin, you were employed at Cal-Neva Lodge in 1943, and 1944?

A. No, I wasn't; prior to that.

Q. Prior to that?

A. Yes, from about—I don't know what year I started, perhaps from the Cal-Neva records you could find out, but I think '38, and I believe I worked there in summers until about '41, but I won't be sure of the dates.

Q. Now in connection with either your professional performances or in connection with your shows which you were assisting producing, did you have any dealings with Cal-Neva Lodge in the years 1943, and 1944?

A. No, none with Cal-Neva Lodge, other than the fact that we visited there, but we had no business dealings.

Q. The first loan you said you secured in 1943, and you first stated you believed it was September of 1943, and the second loan in September of 1944, and then later—

Mr. Gillen: She said about the same time.

Q. (Continuing): —and after refreshing your

(Testimony of Maryce Chaney Martin.)

recollection from this check, placed the date of the 1944 loan as August 30, 1944, is that correct?

A. That is correct.

Q. Now does that also refresh your recollection as to when the 1943 loan was obtained? [2657]

A. Well, I was married on August 17, 1943, and I believe it was a few weeks after I was married because we wished to buy a piece of property at that time and I am not sure what date, but somewhere in there, I don't know the exact date.

Q. Now you negotiated these loans with Mr. Remmer personally, is that correct? A. Yes.

Q. Where was it that you negotiated them, in San Francisco or Cal-Neva?

A. No, I was in Cal-Neva for my honeymoon and it was during that time.

Q. That was in 1943? A. Yes.

Q. And you say you received the money in cash at that time? A. Yes, I received it in cash.

Q. And did you sign a note or any other evidence?

A. No, he didn't ask me to sign any note.

Q. It was given to you in cash, is that correct?

A. Yes, gave it to me in cash.

Q. And in connection with the second loan there of August 30, 1944, you were also at Cal-Neva when that loan was negotiated?

A. I don't remember. I don't believe I was, but I don't remember.

Q. Did you on that occasion meet Mr. Maundrell, who signed that check? [2658]

(Testimony of Maryce Chaney Martin.)

A. Yes, I know Mr. Maundrell. I might have seen him in San Francisco or in Cal-Neva, but I am not sure.

Q. I take it you had known Mr. Maundrell from the time you had appeared at Cal-Neva?

A. That is correct.

Q. Now, Mrs. Martin, at the time you negotiated those loans, or obtained that money, did you know whether or not the funds which were being lent to you were the funds of Cal-Neva, Inc.?

A. No, I didn't. I just asked Mr. Remmer if he could help me. I didn't know where the funds came from.

Q. So that you have no knowledge whatsoever on that subject?

A. No, other than the check just shown to you.

Q. That, of course, is drawn on Cal-Neva?

A. Yes, but I don't know whether he just asked them to give me a check or how he managed it.

Q. You talked with Mr. Remmer and you received the money?      A. That's right.

Q. Now when you repaid it, did you repay by check?

A. No, I paid it in cash usually. I may have given him a check at times, but I don't remember, I am not sure.

Q. Where were those payments made?

A. Usually in San Francisco, because I was living there at the time.

Q. You stated you and your husband were conducting an agency there? [2659]      A. In 1944.

(Testimony of Maryce Chaney Martin.)

Q. Now did you maintain, or did your husband maintain, any record with relation to the repayment of these loans?

A. No, we didn't. We more or less kept track of it ourselves.

Q. Mentally?

A. Yes; I didn't keep any records of it. I didn't think it was necessary and it never dawned on me to keep any records.

Q. But do you now have any recollection as to the balance that you owed on these loans as of December 31st—that is the year end—of any of the years 1943, 1944, 1945, or 1946?

Mr. Gillen: As to 1946, that is assuming something not in evidence because the witness has stated that the entire loans had been fully paid by January of 1946.

Mr. Campbell: If that is her testimony, I think the objection is good as to the last date.

Mr. Gillen: Another observation should be made. Mr. Avakian calls to my attention, counsel mentions 1943. She said she started paying in 1944, the first loan.

Mr. Campbell: Well, I am cross-examining.

The Court: Well, you may proceed.

Q. Do you have my question in mind?

A. Yes, I do. I don't really have any recollection.

Q. As I understand your direct testimony, you do have definite recollection that you did not commence making any payments until 1944? [2660]



(Testimony of Maryce Chaney Martin.)

A. I don't believe we did. I believe we started in 1944, but that is quite a while ago and I don't want to say I remember the exact dates, because I don't.

Q. And you were quite definite that by January of 1946, you had paid off all the obligations?

A. Yes, and my reason for knowing that is that we tried to clear up our debts before our baby came.

Q. And your child was born in January?

A. January 24, 1947.

Q. Since then, of course, that event so definitely in mind, can you place when it was with relation to that event that you paid off the last of the money that you owed on these loans?

A. No, I really don't know.

Q. Could you state it was before or after the end of the year 1945?

A. I think probably at the end of the year.

Q. By the end of the year?

A. I believe so, but I can't really be sure. I don't want to say finally because I don't know.

Mr. Campbell: I think that is all.

#### Redirect Examination

By Mr. Gillen:

Q. By the way, Mrs. Martin, you mentioned that on the occasion of the first loan that you obtained from Mr. Remmer in 1943, following your marriage, I believe you placed it at September or October, you said the reason for that loan was that you [2661]

(Testimony of Maryce Chaney Martin.)

were desirous of buying a piece of property, is that correct?      A. That is correct.

Q. Did you in fact at that time buy a piece of property?      A. Yes, we did.

Q. Can you tell us where that property was located?

Mr. Campbell: I think that is immaterial.

The Court: Why is that material?

Mr. Gillen: It substantiates the statement that she was making this loan for a specific purpose.

The Court: Well, she said she bought property, so I don't think it makes much difference where it is located.

Mr. Gillen: That is all.

(Witness excused.)

(Jury and alternate jurors admonished and recess taken at 4:00 o'clock.) [2662]

Friday—February 8, 1952

10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

Mr. Campbell: There has been produced here by agreement a portion of the original records of the automobile agency of Remmer & Jordon, which was referred to in the testimony of Mr. William Remmer day before yesterday, and at this time, by stipulation, I wish to offer these records in evidence as

government's next in order and will ask that they may be withdrawn at the end of today's session, in order that photostats may be substituted.

Mr. Gillen: That is agreeable, your Honor.

The Court: The exhibit will be admitted, No. 186.

Mr. Campbell: They consist of three cards, appearing to be ledger cards. If I may, at this time I will read into the record from these records.

Mr. Gillen: No objection.

Mr. Campbell: (Reads exhibits.)

Mr. Gillen: Shall we proceed then, your Honor? The defense will call Mrs. Robert Jeffress.

#### MRS. ROBERT JEFFRESS

a witness on behalf of the defendant, being duly sworn, testified as follows:

#### Direct Examination

By Mr. Gillen:

Q. Will you state your full name? [2663]

A. Mrs. Edna Elliott Jeffress.

Q. I take it that Elliott is your maiden name, is that correct? A. Yes.

Q. Will you state where you live?

A. In San Francisco, 672 - 11th Ave.

Q. What type of building is that?

A. It is two flats.

Q. With whom you do reside there?

A. With my two sisters.

Q. Will you state their names, please?

A. Clare Elliott and Helen Elliott.

(Testimony of Mrs. Robert Jeffress.)

Q. Mrs. Jeffress, how long have you lived in that building of flats? A. Eighteen years.

Q. And when you originally went to live there, did you live there with your two sisters?

A. My two sisters and one brother. Since then my brother passed away.

Q. At the time you went to live there, who was the owner of the building?

A. Mr. and Mrs. Robert L. Jeffress.

Q. Did you become very well acquainted with Mr. and Mrs. Robert Jeffress?

A. Yes, very well. [2664]

Q. Now Mrs. Robert Jeffress, did she pass away at some time in the intervening years?

A. She passed away in August, 1940.

Q. Did Mr. and Mrs. Jeffress have any family?

A. Yes, a son and daughter.

Q. Do you recall the names of those two children?

A. James Jeffress and Carolyn Jeffress.

Q. Now when you first went to live in that building, what flat did you and your sisters and brother occupy? A. The lower flat.

Q. And at that time, I take it, Mr. and Mrs. Jeffress and their family lived in the upper flat?

A. Yes.

Q. And at any time in the intervening years did you move from one flat to another?

A. Yes, I moved after I married Mr. Jeffress, moved upstairs.

(Testimony of Mrs. Robert Jeffress.)

Q. When did you marry Mr. Jeffress?

A. In August, 1947.

Q. So we may have your testimony in mind, it is my understanding then that the first Mrs. Jeffress passed away in 1940?

A. Yes.

Q. And seven years later, in August, 1947, you married Mr. Jeffress?

A. Yes.

Q. During the intervening time between the date of the death [2665] of the first Mrs. Jeffress and the date that you married Mr. Jeffress in 1947, seven years later, where did Mr. Jeffress live and where did you live?

A. I lived in the lower flat and Mr. Jeffress lived in the upper flat.

Q. And after the passing of his wife, with whom did Mr. Jeffress make his home in his upper flat?

A. Well, he made his home with his daughter and his son.

Q. Now young Mr. Jim Jeffress, did he remain at home up until the time you and Mr. Jeffress married?

A. No, he didn't. He went into the army, I think the beginning of 1941, early part of 1941, Jim Jeffress.

Q. Do you know how long he was in the service?

A. I think it was the end of '45, or '46.

Q. Now Miss Carolyn Jeffress, how long did she remain with her father?

A. She remained until she was married. I think she was married in March of '46.

(Testimony of Mrs. Robert Jeffress.)

Q. And then Mr. Jeffress occupied the flat alone?

A. Yes.

Q. And you and your two sisters still lived downstairs? A. Yes.

Q. Your brother in the interim had passed away? A. Yes.

Q. After you and Mr. Jeffress married in August, 1947, did [2666] you move any place in that building? A. I moved upstairs.

Q. Did your two sisters continue to live downstairs?

A. They remained downstairs I think about a year and then Mr. Jeffress came up to the Lake and they moved upstairs with me.

Q. Do I understand some time following your marriage Mr. Jeffress came up to live at the Lake?

A. Yes.

Q. With whom did he make his home?

A. Well, part time with his son and daughter.

Q. And where about at the Lake?

A. That was near Brockaway, Lake Tahoe.

Q. Can you tell us about the time he went to live at the Lake and how long he remained there after your marriage?

A. I think he came up the beginning of '48, and he lived up here until June of 1950.

Q. Did you frequently come up here on visits and live?

A. Yes, and then I moved up in August of 1949, to Mt. Rose.

(Testimony of Mrs. Robert Jeffress.)

Q. Now, Mrs. Jeffress, is Mr. Robert Jeffress still living or has he since passed away?

A. No, he passed away in November, 1950.

Q. Now, Mrs. Jeffress, calling your attention to the month of January of 1947, I will ask you whether or not you recall the opening of a safety deposit box in a San Francisco bank by [2667] either of your sisters and yourself?

A. Yes, I do, my sister, Helen, and I opened a box at the Anglo Bank in January, 1947.

Mr. Campbell: I don't understand—do you mean rented a box or entered a box?

Mr. Gillen: Rented a box. I will clear that up.

Q. Is it your testimony that your sister, Helen Elliott, and you rented a box with the Anglo California Bank?      A. Yes.

Q. In January of 1947, is that correct?

A. Yes.

Q. And did she hold that box or rent that box jointly with any one else?

A. Yes, with myself.

Q. By the way, is your sister employed?

A. Yes, she is.

Q. Where?

A. She is employed with the Internal Revenue in San Francisco.

Q. Did you and your sister maintain that box for any period of time jointly?

A. We still have the box jointly.

Q. Directing your attention to the year 1947, at some time between January of 1947, when you and

(Testimony of Mrs. Robert Jeffress.)

your sister jointly acquired this safety deposit box, and the month of August, 1947, when you became the wife of Mr. Jeffress, do you have any [2668] recollection of an incident wherein Mr. Jeffress gave you or your sister a document to put in your safe deposit box for safe keeping for him?

A. Yes, I remember that Mr. Jeffress gave my sister a note to keep for him. He gave her a note and said, "This is a note for money that Bones Remmer"—

Mr. Campbell: Just a minute—I object to conversation.

The Court: That part of the answer may be stricken.

Mr. Gillen: The part that would be responsive is that Mr. Jeffress gave her sister a note to keep for him.

The Court: As I understand.

Q. Now can you fix the approximate time or the occasion that that occurred?

A. Well, it was an evening in the early part of 1947, that my sister and I were having dinner upstairs in his home and he was looking for a paper or something, going through his dresser drawer and I was helping him find the paper and at the time he came across this paper and he took it out and then is when he handed it to my sister and he asked her—

Mr. Campbell: Just a minute.

Mr. Gillen: Don't tell what he said.

Q. Did you see the paper? A. Yes, I did.



(Testimony of Mrs. Robert Jeffress.)

Q. Did you read the paper?

A. No, I did not. [2669]

Q. Did your sister read the paper in your presence?

A. No, she did not.

Q. Was the paper open or folded up?

A. It was folded.

Q. Can you describe how it was folded?

A. Well, I would say it was folded as an ordinary letter would be folded.

Q. I will show you here, Mrs. Jeffress, Defendant's Exhibit A-1 in evidence, which I will identify for the record as the 50 thousand dollar note from Elmer Remmer to Robert L. Jeffress. I will ask you to look at this document, fold it in any manner you wish, if you wish to, and tell us whether or not that appears to be the type or kind of paper that Mr. Jeffress on that occasion handed to your sister to keep for him?

A. Yes, it could very well be the same paper.

Q. Now you have folded it up and let me ask you whether or not the paper that was handed to your sister, to the best of your recollection, was folded in that manner or was folded in any other manner?

A. Well, when he handed it to her it was folded like this.

Mr. Campbell: May the record show that the exhibit indicates at this time two additional folds?

Mr. Gillen: The record may show, as described by Mrs. Jeffress, the document was folded over once and a second time.

(Testimony of Mrs. Robert Jeffress.)

Mr. Campbell: But there are also on the paper two [2670] additional folds.

Mr. Gillen: Stipulated there are two additional folds and stipulated they all appear to be old creases.

Mr. Campbell: They were on the exhibit before that came into evidence evidently.

A. Well, Mr. Jeffress gave—

The Court: Just a moment, please.

Q. Now, Mrs. Jeffress, directing your attention to the month of July of 1947, that would be the month before you married Mr. Jeffress, do you have in mind an occasion when Mr. Jeffress went to Nevada from San Francisco?

A. Yes, I do, Mr. Jeffress went to Nevada the week of the 4th of July, 1947.

Q. Now on that occasion at that same time did you leave San Francisco for any visit to any friends?

A. Yes, I did, I went to Los Angeles.

Q. For what purpose?

A. To visit my niece.

Q. What is your niece's name?

A. Janet Elliott.

Q. What was the date of your marriage in August, if you recall?      A. 23rd.

Q. Now when did you return to San Francisco from your visit with your niece for the 4th of July holiday in July of 1947? [2671]

A. I think we stayed four days.

Q. When you say "we"?

(Testimony of Mrs. Robert Jeffress.)

A. Well, my two sisters accompanied me.

Q. Your three sisters went to visit your niece?

A. Yes.

Q. And you think you stayed four days?

A. I think we stayed four days.

Q. You returned then to your home in San Francisco? A. Yes.

Q. You have stated in your testimony that in the early 40s, I think you said 1941, Mr. Jeffress, Jr., left his father's home to go in the service and in 1946, his daughter, Carolyn, left her father's home at the time of her marriage. In the intervening time, between 1946, and the time you married Mr. Jeffress in August of 1947, did Mr. Jeffress live alone in the flat? A. Yes, he did.

Q. Now on your return with your sisters from Los Angeles in July, 1947, was Mr. Jeffress at home when you arrived?

A. No, he was not, he was still in Nevada.

Q. Do you recall how long it was after you returned that Mr. Jeffress returned to the flat on 11th Avenue?

A. Well, it could have been a week, it could have been ten days or it could have been two weeks. It was a short time.

Q. It was some days after your return? [2672]

Q. When did it come to your attention that Mr. Jeffress had returned home from Nevada?

A. Well, I was away from home and when I returned there was a note under my front door, asking me to come up and see him.

(Testimony of Mrs. Robert Jeffress.)

Q. At that time, in July of 1947, had you and Mr. Jeffress already perfected plans to be married?

A. Yes, we had.

Q. Had you set August as the time for your marriage? A. Yes.

Q. Did you, on returning to your flat and finding the note from Mr. Jeffress, go upstairs to see him? A. Yes, I did.

Q. Was he alone at the time? A. Yes.

Q. Did you have any conversation with him at that time?

Mr. Campbell: May that be answered yes or not if the Court please?

The Court: Yes, answer yes or no.

A. Yes.

Q. When you went to see Mr. Jeffress, what was he doing?

A. He was figuring, putting figures on paper.

Q. Was that conversation that you had with Mr. Jeffress pertaining to any financial loss on the part of Mr. Jeffress?

Mr. Campbell: Objected to as leading and suggestive.

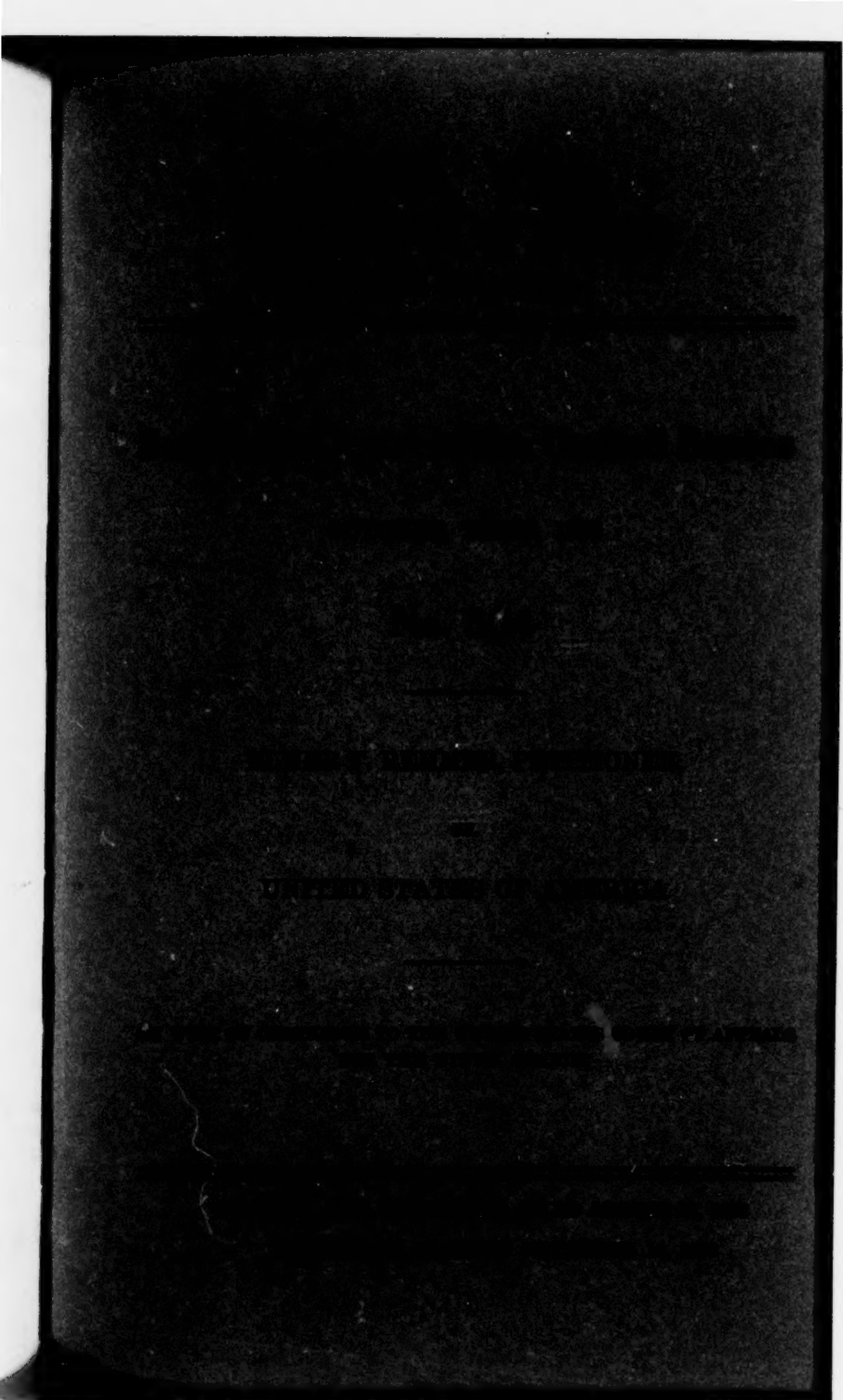
The Court: Objection sustained. [2673]

Mr. Gillen: Then, may it please the Court, we have arrived at a point in this direct examination where I must take up with your Honor the purpose of these questions.

The Court: Very well, then we will excuse the jury.

(Jury and alternate jurors admonished and excused at 10:30 a.m.)

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No. 13281

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**United States  
Court of Appeals**  
for the Ninth Circuit.

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ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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**Transcript of Record**  
In Nine Volumes  
**Volume VIII**  
(Pages 3139 to 3518)

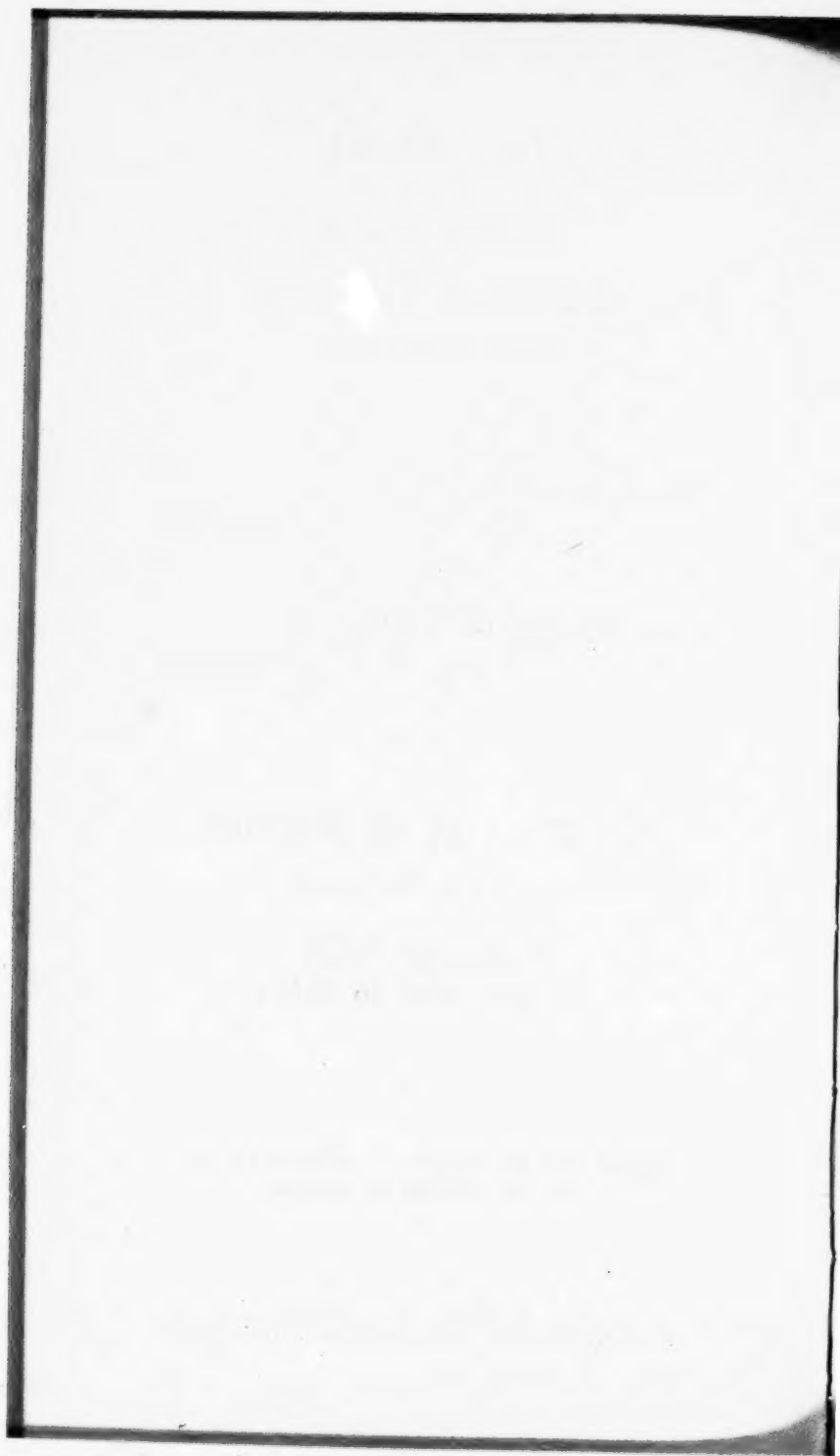
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**Appeal from the United States District Court  
for the District of Nevada.**

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.





BLEED THROUGH- POOR COPY

(In the absence of the jury.)

**RE: CONVERSATION WITH MRS. JEFFRESS  
REGARDING NOTE**

(Feb. 8, 1952. Notebook 341—P.P. 86-90.

Notebook 342—P.P. 1-29.)

Mr. Thompson: I would like to suggest at the outset we have Mrs. Jeffress testify to the conversation. It may assist.

The Court: Very well.

Q. (By Mr. Gillen): I would like to have you state to the Court, if you will, what was the conversation that you had with Mr. Robert Jeffress on the occasion in July, 1947, when, in response to the note he left under your door you went upstairs and found him in his flat working at some figures on a piece of paper?

A. (Mrs. Jeffress): Well, when I went up he said to me that, "I have been foolish; I have been gambling in Reno and lost," "almost went broke" were the words he used. So in his conversation he was figuring and he said to me that "Part of the loss was taken care of by Mr. Bones Remmer from \$50,000 that he owes me."

Mr. Gillen: Now, may it please the Court, we submit that conversation as a declaration against interest by Mr. Robert Jeffress in 1948, showing an outstanding obligation as of the end of 1946, as to repayment by Mr. Remmer as to a part, if not all, of that obligation in 1947. Of course, your Honor will have in mind that this is supported by the

\$29,000 check and the testimony of Mr. Perkins, that Mr. Jeffress had become obligated in the sum of \$23,000 to the Bank Club and that Mr. Remmer had underwritten that obligation and that Mr. Remmer, upon receipt of the \$29,000 check, growing out of the whiskey transaction, had endorsed the check and had refunded, or there had been retained by the Bank Club, to cover Mr. Jeffress' obligation, the sum of \$23,000 out of the \$29,000 check. Now, your Honor, I think we had quite a comprehensive discussion yesterday of the universal rule expressed in Corpus Juris that declarations against interest could either be a declaration with regard to the declarant owing some money or in regard to the declarant acknowledging that an obligation due him had been repaid. Each of them is declaration of interest in one reverse or the other.

Mr. Thompson: If the Court please, we object to the conversation upon the ground it is hearsay and incompetent, does not come within any exception to the hearsay rule. If your Honor please, the conversation as testified to by Mrs. Jeffress, it is not an acknowledgement or statement by Mr. Jeffress that he owed anybody anything which would be a declaration against his interest. It is a statement to the effect that he had lost some money gambling, but did not owe that money, that that money had been paid, and it is also a statement to the effect that Mr. Remmer owed him some money. Taken together they are two statements in favor of his interest; first, that he had paid an obligation which he incurred at the Bank Club by reason of his

gambling, and, second, that Mr. Remmer owed him \$50,000. Both of those declarations are in favor of, rather than against, his interest.

Mr. Gillen: Your Honor, I would like to respond to that and first, if I may, so both your Honor and myself will follow the thought, I would like the reporter to read to your Honor the answer by Mrs. Jeffress.

The Court: Yes, read the answer.

(Answer read.)

Mr. Gillen: Now, here we have this foundation for the admission of this declaration against interest and exception to the hearsay rule from the evidence, your Honor: First of all, we find that Mr. Jeffress, the declarant, died in November of 1950; that in July of 1947, along the holiday, 4th of July holiday, that Mr. Jeffress went to Nevada; that he returned during the month of July from Nevada; that he had a conversation with the woman who is on the witness stand, whom he had already had arrangements to marry the following month—the arrangements had already been made—and he at that time declared—first of all, we might say we have, if your Honor will recall, the summarization of the indispensable elements of this matter—we might read the preamble to refresh our minds on it: "Requirements for Admission of Declarations" (Reads from CJS). Now, we have to establish in the record he passed away or was unable at this time as a witness. (2) We have a statement regarding his finances and regarding an obligation that

was incurred by him as the result of a gambling spree and losses that had been incurred by him. (3) Now, this means only that the declarant must be acquainted with the facts and circumstances in the matter, which certainly he was. I mean, he knew he lost money and he knew out of the obligation owed him by Mr. Remmer, that Mr. Remmer had taken care of part of the loss. (4) Now, once again if we may refresh our memories on the type of cases that must be involved here, we find—I am reading from *Corpus Juris Secundum* Vol. 31 on "Evidence," we find in Section 219 on page 963 this language: (Reads.) Now, we have both here. We have the statement that he had become obligated to the club where he had been gambling, and we have here an obligation due him had been paid in payment of his obligation to another, so we have a round-robin. We have met all four requirements, and then, of course, your Honor has in mind the statement of Wigmore, the philosophy of making this an exception to the hearsay rule, so I submit, your Honor—

The Court (Interceding): What did we hear yesterday about one of these prerequisites, something about primary evidence being available?

Mr. Gillen: Well, the primary evidence means the primary evidence as to declaration made by the declarant, not as to testimony, but as to declaration made by the declarant and Mr. Wigmore says in his work: (Reads Vol. 5, Sec. 1465 Wigmore.)

The Court: Well, we have the situation—just assume the facts as they are introduced here—as-

sume that there was an obligation of \$50,000 due to Mr. Jeffress from Mr. Remmer——

Mr. Gillen: There is evidence of that in the record already.

The Court: Say prior to the conversation, or prior to the incident recited in the conversation, the gambling loss, Mr. Remmer was indebted to Mr. Jeffress in the sum of \$50,000. The effect of the evidence we have heard and the effect of the conversation, would amount to this, that just prior to this conversation, or shortly prior to it, Mr. Remmer had paid something on account——

Mr. Gillen: That is correct and that is declaration against the account.

The Court: ——something on account, therefore decreasing to that extent the total of that indebtedness, \$50,000.

Mr. Gillen: That is correct.

The Court: Now, we have here in the language of Corpus Juris Secundum: (Reads) "On the other hand, the declaration against \* \* \*." Well, if an individual owed a sum of money to me and by some arrangement had settled a part of it and paid part of it and I made a statement to that effect, I think that is a declaration against interest.

Mr. Campbell: But isn't it true the other part of the objection, that primary evidence is here available——

The Court: That is something I would like to have some authority on now.

Mr. Campbell: As I read Corpus Juris Secundum——

The Court: That is the one point I am in doubt about.

Mr. Gillen: I might straighten your Honor and Mr. Campbell out on this. In this same volume is found the situation that some jurisdictions have held the admission of this type of evidence to a supreme court role and that the supreme court rule in some jurisdictions is this—they say, we will not accept declarations against interest merely because the declarant is not available to the court unless he is dead.

The Court: Yes, I read that.

Mr. Gillen: Now, the general and more liberal and universal rule is if he is beyond the jurisdiction of the court for any reason, so we have here complied with the strictest limitation of the rule.

The Court: I think we can safely say that the acknowledgment of a part payment of a debt certainly would be declaration against an interest.

Mr. Gillen: No question about it, your Honor.

Mr. Campbell: I wish to refer to page 942, paragraph 204, *Corpus Juris Secundum* Vol. 31 (Reads.)

Mr. Gillen: Before we lost our thought on the one point your Honor has in mind, that we are not entirely bereft of supporting evidence. There is included here some writing that will support this declaration; there is a note; there is a check; there is testimony by the prosecution's witness that part of the check, to wit, 23 thousand dollars, was retained for certain purpose, to wit, to pay an obligation of Mr. Jeffress, from Mr. Remmer.

The Court: Just the other way.

Mr. Gillen: Was retained by the bank to pay an obligation of Mr. Jeffress from Mr. Remmer; that is, Mr. Remmer paid an obligation for Mr. Jeffress—I put it awkwardly, I am sorry.

The Court: I see what you mean.

Mr. Campbell: It seems to me it goes back to the initial proposition. Here supposedly is a conversation of two people, one of whom is available and the other is not available. If evidence is to be put in in this fashion, through hearsay declarations, the government is bereft of an opportunity of questioning as to the true nature of the transaction, testing out the accuracy of the statements made by the decedent. Also I referred yesterday to page 943 as to the admissibility of a declaration and the elements. It says: (Reads) “Where declarant had adequate knowledge of the facts stated \* \* \*.”

The Court: Well if we can find a definition of primary evidence. It might be so simple that we ought to know it without any research, but it might be a good idea just to find out what it means.

Mr. Campbell: May I suggest the morning recess at this time.

(Recess taken at 10:55 a.m.)

11:15 A.M.

(Defendant present.)

The Court: I think, if you permit me to, I would like to give you some thoughts I have here now and then you can direct your arguments for or against the ideas that I might express here.



First I would like to start off with this citation of authority you have on primary evidence. (Corpus Juris Secundum, Vol. 31, 942-943.) Well, this, of course, is hearsay evidence and proposed to admit it as an exception to the hearsay rule and in CJS we find this statement, on page 942, Section 204: (Reads.) So if we start out with the thought that before evidence of the kind offered here is admissible, there must be a possibility of obtaining what is called primary evidence—now note the original edition, Vol. 22, CJ 973, Section 1219: (Reads.) So I would take it that the best evidence and primary evidence meant one and the same thing. Reading on the same section: (Reads.) “The best evidence \* \* \*.” Now, on page 974 the best evidence rule: “The rule of evidence commonly known \* \* \*.” Now, in the next section there are limitations of that rule recited, page 975: (Reads.) Now, I think those are the rules of evidence and they apply no doubt to both criminal and civil cases, but in the article on Criminal Law, 16 C. J., original Corpus Juris, on page 611: (Reads.) Then in Section 1219 of the same volume on page 616, we find an article headed as follows: “Grounds for Demurrers to the Admission of Secondary Evidence.” (Reads.) So my present thought is I will sustain the objection, in view of the principles which I find here.

Mr. Gillen: Then I have the answer to that, I am sure, your Honor. May I see Vol. 31 again. May it please the Court, I think I can state, without fear of being challenged by any one, that the best evi-

dence of the fact that once Remmer owed Jeffress \$50,000 and that Remmer had paid Jeffress back part or all of that \$50,000, would be Mr. Jeffress himself taking the witness stand and saying, "Yes, Remmer owed me \$50,000 but he has paid me back \$50,000 and he paid it at a certain time," or he might even say "he paid me under certain circumstances." That would be by far primary and best evidence. Of course, I think, your Honor, the best evidence rule applies primarily, if not exclusively, to writings; in other words, secondary evidence as to what is in the writing, who prepared it or wrote it and was it destroyed and not available for any of numerous reasons we can think of, secondary evidence is now allowed by some one who had knowledge of that writing.

The Court: I notice that statement but I can't agree with that, that that applies to writing.

Mr. Gillen: I do not think it is going to confuse us, your Honor, in any event. Now, if I owed a man some money and I paid him back, I say again that the best evidence would be my creditor making the statement on the witness stand, "Yes, Gillen owed me some money but he has paid me back," because there the man is hurting himself, he is making declaration against his interest. That would be much stronger than if I would take the witness stand and say, "Yes, I owed John Jones some money but I paid him back" and you have nothing other than my word for that. You are far more liable to believe and it is far more convincing, to have the creditor say, "He now doesn't owe me any

money because he paid it back." The debtor's testimony would be in the nature of self-serving statement.

The Court: That might be better evidence than the creditor's.

Mr. Gillen: Then what?

The Court: Than the other party's statement to the same transaction.

Mr. Gillen: Yes, your Honor, I think my statement as to the debtor would be self-serving statement, while the statement of the creditor would be declaration against his interest and would be far more convincing and have far more force by the triers of the facts.

Now, I think what is bothering us here could be cleared up in a word. What are we seeking the best evidence of here? We are seeking here the best evidence of what declaration was made by the declarant against interest. We are seeking the best evidence from one source, and I would like to read your Honor from the very page that Mr. Campbell read to your Honor. It is Section 204, Vol. 31, Corpus Juris Secundum, under "Evidence," at page 942, and under the general heading of "Impossibility of Obtaining Other Evidence," we find on that page a footnote and the footnote reads as follows and refers to a case which I will be happy to read to your Honor. The footnote reads as follows: (Reads.) Now, is that clear to your Honor? In other words, a fact is in dispute and this footnote says that the necessity that arises as an exception to the hearsay rule is not because there is no

other source from which the same information concerning the fact may be obtained, but because there is no other authenticated way of obtaining it from the same source, the same source being the declarant who made this statement of declaration against his interest. Let me read that again, your Honor. (Reads.) The same source being Mr. Jeffress in this case.

Now, that footnote cites the case of *In re Roders Estate*, 193 Pac. (2), 631, and in that case, which was a case concerning intention, although there was evidence to the effect in writing, because it evolved around a will, a change in will, the point that we were concerned with was the intention and declaration against his interest that was made by the taxpayer in the case. The court says, in reviewing the matter, at page 634 of the decision, paragraph 2 of the decision: (Reads.) In other words, there may have been other sources of what apparently was the intent of the testator, but there was no other source but the testator's or somebody who had heard his declaration against interest, the same source as to his intentions. Now it says: (Reads.) "It is under this principle \* \* \*" and it cites *Wigmore on Evidence*, page 155, Section 1421.

So now we are concerned with this, your Honor. What is the best available evidence at this point in the case of learning what Mr. Jeffress had to acknowledge concerning an obligation that was outstanding to him from another person. The best available evidence would be, of course, regardless of anybody else concerned in the transaction, would

be Mr. Robert Jeffress himself taking the witness stand and saying, "Yes, this obligation was outstanding but on a certain date it was paid, therefore, the obligation is no longer due me," or part of the obligation, whatever the case might be—it is immaterial. Mr. Jeffress would then be making a declaration against his interest. It would be the most forceful and strongest evidence of the transaction that we could obtain. Now, Mr. Jeffress is unavailable to this court by reason of the phraseology that is within the limits of the very strictest rule, strictest interpretation of this exception to the hearsay rule, which as your Honor recalls, some jurisdictions say merely because he is not available is not enough, he has to be dead, while some jurisdictions say other circumstances of inavailability other than actual death are good enough. Now, in the absence of Mr. Jeffress, by reason of his death, what is the next best and most authentic evidence that we can obtain from that same source, regardless of the fact that there may be other sources who can throw some light on the subject, what is the best evidence that we can now obtain, in the face of Mr. Jeffress' death, from that same source, to wit, Mr. Jeffress, concerning a declaration against his own interest, and that source is a person who heard Mr. Jeffress make the declaration against his own interest.

Now, to me, your Honor, it is very clear, and let us just once more look at that language. The language says: (Reads.) And the language again here on the next page, 634: (Reads.) And of course the same source is the declarant, the man who declares

against his own interest and if he is not here, then the next best evidence you can obtain from the same source, from the same man, from the declarant—

The Court (Interceding): Do you care if I ask a question or two?

Mr. Gillen: No.

The Court: What was the declaration which was offered in that will case, 193 Pacific (2)? What jurisdiction was that?

Mr. Gillen: That is New Mexico.

The Court: Now, tell me what was the declaration and question to be proved in the case? What was the main issue of the case?

Mr. Gillen: The question to be proved in the case by this, may it please the Court, the decedent, the testator had made a will. He had subsequently changed his will, changing thereby the interests of certain heirs, but in changing his will he had not executed the codicil, so the changed portion of the will was not in strict adherence to the probate rules and therefore the will was attacked for being not properly executed in form, and then the question arose—the probate court, as your Honor is well aware, trying to obtain the true intent of the testator—then the question arose as to the testator's intent in the premises and under the circumstances and his declarations of his desires were the circumstances there served as declaration against his interest and also enlightened the probate court as to what his true intent was, although the manner in which he did it did not live up to the strict letter

of the law about the manner of executing a codicil to a will or making a change.

The Court: Wouldn't a reading of that case disclose that no evidence could be offered, no proof was available, of the decedent's intent except that declaration?

Mr. Gillen: No, there was a writing connected with it, but this is the writing which was objectionable.

The Court: That would prove the thing had not been legal, construction of the instrument, but other than the legal construction of the evidence, there was no evidence available except declarations of his intent?

Mr. Gillen: From that source?

The Court: No, other sources.

Mr. Gillen: No, the Court said there was evidence from other sources——

The Court (Interceding): A thought occurred to me now. Just suppose that the rule is advanced as the true rule that any declaration could be admitted that was a declaration against interest in any case where the declarant was dead?

Mr. Gillen: That is the exception to the hearsay rule.

The Court: Whether or not the best evidence?

Mr. Gillen: The court here indicated that although the question was raised, there were other ways that these declarations were objectionable, in that the court in this case stated this was not strictly declaration against interest because the man was giving away his property anyway. It was more



declaration of his intentions but the court said, regardless of the objection raised, this was hearsay and not a true exception of the hearsay rule and there were other ways of getting at this same evidence. The court says: "Necessity we understand \* \* \* from the same source."

The Court: Well, from the same source.

Mr. Gillen: From the same source. Now, here we have——

The Court (Interceding): I can't go along with that, Mr. Gillen. I am going to sustain the objection.

Mr. Gillen: May we have a few moments after the recess?

(Noon recess taken at 11:45 a.m.)

2:00 P.M.

(Defendant present.)

Mr. Gillen: Shall I proceed, your Honor?

The Court: Yes, sir.

Mr. Gillen: May it please the Court, your Honor made an inquiry of me this forenoon which I misunderstood and it was called to my attention by Mr. Golden. I miscomprehended what your Honor said and that was the question your Honor asked me if it were my contention that the declaration against interest of a dead or unavailable person could be used in all cases. I said yes, because I had in mind your Honor was relating to this same type of circumstances. The answer to that is no, but before I answer your Honor's question, there is another



point that I think perhaps should be cleared up, and it is a matter that was raised by Mr. Campbell and if I may dispose of that first, your Honor, then I would like to take up the question that your Honor posed.

Mr. Campbell made one observation or contention to this effect—he said if this declaration is permitted, the prosecution is then deprived of the opportunity to cross-examine. Now, our contention is this, your Honor—the question to be probed into by the prosecution is whether or not the decedent or declarant, who is now dead or unavailable, whether he made a declaration against his interest. Now, as said by the witness on the stand, this decedent “made this declaration against his interest to me.” That person is available for cross-examination to determine whether or not such a declaration was in fact made by the declarant now deceased, so he is not deprived of his opportunity to cross-examine.

Now, as to the declaration itself, the authorities and the rules have shown us that as to the truth of the declaration, or the declaration as to the truth of its contents, is authenticated by itself, because it is a declaration against interest and because, as the rule points out, one does not make a declaration against his own interest unless it is true. In other words, one does not deprive himself of pecuniary rights or gain or proprietary rights unless true, so the fact of the declaration against interest, the truth of it, is authenticated by the fact it is made against the interest of the person making it. Now,

as to the proposition of whether he made it or not, of course, that is a matter that can be probed into by cross-examination of the person who contends that the declaration was made. So much for that.

Now, your Honor asked me this morning, and as I say, I miscomprehended because I thought your Honor was referring to this set of circumstances, where the circumstances were the same, whether or not declaration could be used in any case, and the answer is no. The declaration against interest of a deceased or unavailable person can be used when no higher or better evidence from the same source, or actually created by the same declarant, can be obtained or is available. In other words, the evidence that is created comes from a source. That source, of course, is the declarant. When no better evidence than the declarant's declaration against his interest can be obtained, or when no better evidence than that created by the declarant now unavailable can be obtained, then the declaration against interest, as an exception to the hearsay rule, can always be used.

Now, as to the matter of something better, some higher type of evidence created from the same source, let us take as an example when Mrs. Jeffress took the stand and stated: "My husband"—at such a time, at a time and place—"wrote me a letter and in that letter he stated \* \* \*" thus and so, concerning either his declaration against his interest, as owing somebody some money, or as the obligation owed to him having been paid. Now, there the prosecution could readily object that better than

her relating a declaration against that had been made to her, that the letter itself would be the best evidence, the letter in his handwriting, in which he made the declaration against his interest. Now, that not only is an illustration of declaration against interest, merely testifying, when there are available better evidence in writing by him, but it also is another example of the best evidence rule, limiting the use of secondary evidence; and in that regard, may it please the Court, may I invite your Honor's attention on that very subject to 5 Wigmore, third edition, at page 260, and it is Section 1456. The section is called the "Necessity Principle" and it says as follows: (Reads).

Now, you see why we should repeatedly come up with reference to this rule, your Honor. The rule does not say whether evidence on the same subject matter was available or whether evidence concerning the same transaction, it says the availability of other or better evidence from the same source. Now, what is the same source? The same source refers to the declarant, the person who has made a declaration against his interest. Let us read that again, your Honor, that subject of necessity of excepting to the hearsay rule. (Reads.) Of course, that is the most certain reason for the unavailability of the witness.

Now, if the unavailability of any other person to the same transaction were the rule, then, of course, you could never use the declaration against interest of one of the parties of the transaction. I do not know whether I am making myself clear to your

Honor, but it is clear to me that the rule is that it is not whether or not you can obtain other evidence as to the same transaction, same topic, same subject matter, same incident, whatever it may be, that is not the test. The test is, is there any way of getting better or other evidence from the same source and when they use "source" they mean declarant, and when they say "declarant," they mean declarant unavailable by reason of being beyond the reach of the court, and better still and universally accepted, the fact the declarant is dead and certainly cannot be reached by the court, and then the only next better evidence that we can obtain of that declarant's or that source's information or declaration against his interest is a witness to whom he made that declaration during his lifetime and in this instance, of course, he made his declaration to his intended wife. He told her about his predicament, that he had been foolish, that he lost a considerable amount of money, became indebted and a man who was obligated to him had picked up some of his debt, and to me, your Honor, I do not think you can find, in the light of the wording of the rule, which is the universally accepted rule, you can find a stronger example for declaration against Mr. Jeffress' interest. I submit it.

Mr. Campbell: I would like to add one or two observations if I may. I disagree, of course, with Mr. Gillen's statement and implication of the law. Might I point out if his situation, or if his last contention, were true that by the same token it would be possible then for the government in this

case, in instances of certain witnesses who were unavailable on account of health or on account of not being able to locate them by process, to put in evidence of statements, either in written form or in oral form, say he had made to the agents, which, of course, we know is not the law and cannot be done in that manner that the evidence must be produced here.

Now, our contention is simply this—in the first place, we do not concede that the statement made by Mr. Jeffress to the now Mrs. Jeffress was a statement against interest, and in the second place, assuming that it was, we do not believe that it is admissible in this case, in the absence of a showing that primary evidence, or the best evidence, is not available. Now, in criminal cases the usual instances of admissions against interest are admissions offered by the prosecution, admissions which have been made by the defendant outside of the court room and at various times, either before or after the occurrence of the offense and they are admissible because they were made against the defendant's interest and the defendant himself is not available to the government to call on the stand to attempt to produce the same admissions.

Now, in this instance the ultimate fact, I take it, which is sought to be proven, is the circumstance of a loan made from Mr. Jeffress allegedly to Mr. Remmer, which loan was outstanding, at least a portion thereof was outstanding, as of December 31, 1946. The note itself, as counsel pointed out, is here in evidence. Mr. Maundrell, on cross-examination,

identified the note as having been made by him under the direction of Mr. Remmer, that he saw some money there, he did not count it, he did not know how much there was—a bundle of currency that was brought in—that he did not know when the money had been paid back, the loan, if, in fact, the loan had been consummated. So much is in the record. There is also some evidence in the record by Mr. Perkins that in July of 1947 that 23 thousand and some odd dollars of an obligation which the Bank Club owed to Mr. Remmer was, with Mr. Remmer's consent, applied on an indebtedness which Mr. Jeffress owed at that time to the Bank Club. I think that is essentially all that the record now contains as to that matter.

Now, the best evidence of a transaction or of an event is necessarily the evidence of the participants and of the eye witnesses. In this instance the best evidence of the existence of the loan, of course, as of the time the loan was made, would be the note itself, but as to the circumstances under which the document was drawn, the time which that loan continued, is a matter peculiarly within the knowledge of the principles. Now, I submit—I believe counsel alluded to this this morning—the evidence of Mr. Jeffress, if he was here and available, as to the payment of that note might be entitled to a little more weight than the testimony of the defendant here, because the defendant, of course, is an interested party to these proceedings. However, the testimony of both of them, or of either of them, is the best or primary evidence of what was done. Sup-

pose there was a lawsuit which involved that note—now the evidence of either of them or of both of them would be admissible and each of them would be and would qualify to be the best and primary evidence of the events themselves. Now, it would be possible to carry this one step farther, for some one to take the stand and give any type of a story as to what some irresponsible, but now deceased, person—I do not wish to be understood as referring to Mr. Jeffress as an irresponsible person—I am using a hypothetical case—but what some irresponsible man said prior to death, such as saying, “Mr. Remmer owed me a million dollars and paid it back yesterday”—clearly that would not be admissible and would have no probative value. There would be no manner in which the government could test the truth of the statement. It would be possible, and this type of testimony would make it possible, for a defendant in a case to testify without subjecting himself to cross-examination and the test which the law requires.

Now, referring for a moment to the case cited by counsel this morning, the New Mexico case. In that case, which was a will contest—and I think the Court is thoroughly aware that special rules apply to the declarations made by a decedent at the time that he signs his will and has the witnesses attest to it—in most jurisdictions he makes a statement to the attesting witness that “I declare this to be my last will and testament” and they so certify—that is a declaration generally recognized and in proving the attesting witnesses come in and say, “We were



both present and in the presence of each other he signed and acknowledged it to be his last will and testament." In this particular New Mexico case there had been presented a document for probate, the front page of which document contained certain changes. In the contest there was produced a will, as I recall, in which, as in the first document—both documents consisted of three pages—the second and third pages of both purported wills were exactly alike, all three pages in each case were stapled together, but the first page of the contested document and the first page of the document which was offered in evidence were different and the contestants of the will sought to show that the document offered for probate, as I recall—I am stating here facts from memory, I may be a little wrong, but I do not believe so—sought to show that after the execution of the will properly executed and in the presence of witnesses, as required by the New Mexico laws, which requires, as most other States do, the presence of two witnesses and attesting clause and declaration by the maker of the will—they were attempting to show that at some subsequent date the decedent had decided to make certain changes and that he apparently had made those changes and substituted them as the first page in one of the duplicate originals, without meeting the requirements of the law for a codicil, and in proving that these changes and that alteration had been made at a date subsequent to the attestation clause of the will, they were attempting to, and were permitted to, introduce these declarations of the decedent as to what changes he



was going to make, and that was for the purpose of showing that the will, which had been admitted to probate, so far as the first page was concerned was not a valid document, because it had not met the requirements of the New Mexico probate law.

Now, I submit that this is an entirely different situation than is presented here. Here we are offered evidence of a conversation. Now, I take it the only material part of the conversation, and the part which counsel would indicate was an admission against interest, is the reference by him where Mrs. Jeffress says that Mr. Jeffress said, "I got myself into trouble gambling. I lost a large sum of money which was paid for me by Mr. Remmer on account of money"—I believe she used the sum \$50,000—"on account of \$50,000 which I loaned to him back in 1946."

Mr. Gillen: Which he owes me.

Mr. Campbell: Well, which he owes me since 1946.

Mr. Gillen: I do not think she mentioned the date.

Mr. Campbell: My recollection is she referred to the year 1946. Well, I don't think that makes any difference.

Now, as to money owed him by Mr. Remmer, I submit that this is not a statement against interest. That is a statement in favor of the pecuniary interest and on that grounds that statement, or that portion of the statement, would clearly not be admissible, even if proof were in the record here

showing that primary or best evidence was not available.

Now, what is primary or best evidence? I am going to refer to some of the authorities set forth in "Words and Phrases," Vol. 33, the permanent edition, published in 1940 and which, of course, carries cumulative back parts, which volume I have in my hand, carrying back part through 1951. There is quoted here the case of *Cavelle vs.——*, 77 Pac. 55, a Montana case:

"Primary evidence is that kind of evidence which under every possible circumstance affords the courts certainty of the fact in question. Thus a written instrument is itself the best possible evidence of its existence and content."

Another authority quoted here, *Best vs. Equitable Life Insurance Company*, 299 S. W., 118, referring to page 120, and the note on that decision says:

"Best evidence or primary evidence is the particular means of proof which is the most natural and satisfactory of which the case admits and includes the best evidence which is available to a party and procurable under the existing situation, and all evidence falling short of such a standard and which in its nature suggests there is better evidence of the same fact, is secondary evidence."

Which, of course, is directly in line with the portion of *Corpus Juris* to which your Honor referred this morning.

Another case referred to, a recent case, is that of *Pettit vs. Campbell*, a Texas case, reported in 149 SW(2), 633 at page 635:

"Primary evidence or best evidence is the kind of proof which affords greatest certainty of fact in question under any of its circumstances."

Now, the position of the government is first, that the proffered statement of Mr. Jeffress is not, upon analysis, a statement against interest, and, secondly, that even if it were, it is not the primary or best evidence of the facts which are sought to be proved through the proffered testimony.

Mr. Gillen: May it please the Court, I think I can answer those points very rapidly.

Counsel is reading your Honor rules with which we have no quarrel. We have no quarrel with the best evidence rule as stated, and he has read rules and set forth what is recognized in law as primary evidence or the best evidence to prove a fact, but he is talking at cross purposes with the problem that confronts your Honor. He is quoting a general rule and he is shutting his eyes and ears and turning his back to and completely ignoring the necessity principle that has been related here in connection with the exception to the hearsay rule in the matter of exception of declaration against interest, because he is ignoring what the rule has to say and what is universally held in the words "from the same source."

Now, he has to admit himself that if the defendant in this case were to take the witness stand and testify that "I have paid an obligation that I owed to a Mr. Jeffress," or a part of it or paid all of it, that that wouldn't be as effective as the creditor himself taking the witness stand and saying, "The

man is no longer obligated to me," because in the case of the debtor testifying, "I paid him," that is a self-serving statement and in the case of the creditor testifying that he paid, that is a declaration against interest.

Now, the question is not what is the best evidence as to the fact. These two people, the creditor and the debtor, were in different businesses altogether and on different planes. The question that we are concerned here with is what is the best evidence from this same source. The source means Mr. Jeffress, the creditor. The source means the declarant who made the declaration against interest. What is the best evidence available? Now, if there was a writing existing from Mr. Jeffress to the effect that he had been paid, I will concede readily that that would be better evidence from that same source than the testimony orally of Mrs. Jeffress that he told her that in person and vocally. But we have no evidence here of any written acknowledgment or any writing declaring against his interest that there was a note or an obligation to him.

Now, counsel said something that makes me think he hasn't been listening while we have been discussing things here. He says Mr. Jeffress' declaration, if we break down the testimony and analyze it, that it wasn't declaration against interest at all, because when a man says a certain party owes me money, that is declaration in his interest and not against interest. Conceded; but when a man says a certain party owes me money and he has paid part or all, the portion referring to the amount he de-

clares the obligation has been paid, is a declaration against his interest, because he is directly depriving himself of claim for the money or property or whatever is involved.

The Court: I think I will go along on that branch of the argument.

Mr. Gillen: Thank you. In 20 Corpus Juris on Evidence, Section 557, to which counsel referred a moment ago, on page 469 we find this: (Reads): "A declaration against interest is admissible notwithstanding the declarant \* \* \*." In other words, if there is conversation related, a declaration of a deceased person related, part of which is collateral to the declaration or part of a declaration against interest, the entire conversation that was had is admitted, if it is connected up with the ultimate declaration against his interest, so if a man says, "Jack Jones owes me"—or owed me or owes me—"a thousand dollars, but he paid \$500 of it," it can not be knocked out because he says he owes \$500, which is a declaration in his interest, and thereby defeat a declaration against his interest by adding to that sentence, in the same conversation, "but he has paid me back \$500." That is exactly what happened here. Mr. Jeffress said to his intended wife, he said, "I have lost this money, I practically broke myself," and whatever else he said, and then he said, "Remmer paid my obligation from the \$50,000 that he owed me." I don't have the exact words, but your Honor heard and remembered. There a man is saying a man was obligated to him but had liqui-

dated, at least some of his obligation, and that part is declaration against interest.

Now, counsel has said another funny thing I don't quite follow. If your Honor lets this declaration against interest to go in, he says then in cases where witnesses, whom the government would like to have and did not arrive, because they were ill or for some other reason, and if they make statements to the agents, they could simply bring in these statements and put before the court. Well now, a statement that is taken by an agent of the Internal Revenue Department in an investigation matter of the person, is not a declaration against interest of the man who makes it. That would categorically be simply relating some facts within knowledge or answering some questions concerning facts by another person altogether and he would certainly have to show it was definite declaration against interest before he could introduce it. However, he did that very thing in the case of Mrs. Badovinatx and that very thing was this—Mr. Badovinatx told his wife in February of 1947, "I am going down to the bank to purchase a cashier's check to pay Remmer \$5,000 that I owe him" and they introduced that evidence and that was, of course, undoubtedly a declaration against the interest of Mr. Badovinatx. Mr. Badovinatx was dead, he was not available, so they bring in the person to whom he made the declaration against his interest.

The Court: They couldn't offer any one else to prove that fact.

Mr. Gillen: They could offer exactly the same person they are contending we could offer here.

The Court: They couldn't offer Mr. Remmer.

Mr. Gillen: As a defendant, no. But could they offer anybody better to bring to your Honor's attention a declaration against interest from the same source? Those are the words that stick and those are the words counsel steps over and sidesteps from time to time, but they certainly mean something. From the same source in plain, ordinary language, means from the same place or same person. If you get a supply of groceries from the same source, that means you get it from the same store. If you get information from the same source, it means you get it from the same person; that is what the law means. What is the best evidence? It is the fellow who created it but is unavailable by reason of his death; then what is the next best place to get evidence he created by declaration against his interest? It is the person to whom he made the declaration.

The Court: I cannot reconcile that idea in my mind. I would like to hear a statement——

Mr. Gillen: What do you think the authorities mean by "from the same source"?

The Court: They are qualifying something that admits of no qualification because there can only be one class, the evidence from this lady here, this statement. It is the best and it is the worst that could be gathered from that source. It seems meaningless to me.

Mr. Gillen: What do they mean—I ask respect-



fully—when they say, “It doesn’t mean that other evidence can be gathered from other sources, but from the same source.” That same source would be other parties to a transaction.

The Court: Let us apply that phrase. I am trying to do a little thinking out loud. The best evidence from the same source, you mean from the same declaration. It admits of no qualification or anything of the kind. It is neither the best nor the worst. It is all you have.

Mr. Gillen: I do not think it means that at all.

The Court: What do you mean by best evidence from this declaration? If you can define that, tell me what would be the worst or something other than the best?

Mr. Gillen: I think the worst would be another party’s statement which might be self-serving. I think the best would be——

The Court (Interceding): Let us take the situation we have here now. You know it was all right; if it wasn’t, the lady wouldn’t have mentioned it. That is all we have, is the statement of Mrs. Jeffress. How could you apply this or divide it into degrees or qualify it in any way?

Mr. Gillen: Because the rule says there may be other sources that you can get evidence concerning the same transaction from, but that is not the test. It is the test whether you can get it from the same source. May I read this note again to your Honor and read the distinction which is made in the New Mexico case. Here is what *Corpus Juris Secundum*, Vol. 31, that we read from this morning, Section



204, page 942, says. It speaks of necessity for pursuing the hearsay rule and admitting declarations against interest: (Reads.)

Now, your Honor, I have in mind in criminal cases we have other exceptions, the primary being the case of the dying declarant, the man found in a dying condition, and believing he is about to die, makes a statement which, because of the sublimity of the moment, the law says we can——

The Court (Interceding): I do not know whether necessity applies to *res gestae* or not. We are not concerned with the *res gestae*.

Mr. Gillen: *Corpus Juris Secundum* says: "Necessity should be based \* \* \*" That is what is bothering your Honor. Your Honor seems to feel if there is no other evidence, then what are we going to do, but if there is other evidence, shouldn't we resort to that other evidence? This rule says no. This rule says: (Reads—"It is not necessary \* \* \*") What is the point in question? Did or did not Mr. Jeffress receive some of an obligation due him from the defendant in this case? That is the point in question. (Reads.) Now, the same source is what? He said "He owed it to me but he paid it to me." That is the same source, and in the Roder case, which is cited in this note in *Corpus Juris Secundum*, we find the same situation stated with a little greater detail on page 634: (Reads—"Necessity as we understood \* \* \*")

Now, what is being contended here is one of the parties to this transaction is dead, but there is another party to the transaction who still lives and

so, therefore, there is available another source; whether it be a more reliable source or less reliable source, there is another source from which we can obtain some enlightenment as to the transaction; namely, whether or not any part of this obligation was paid back. Now, the same source is the declarant, the man who made the declaration against his interest—"He owed it to me but he paid it, therefore, he doesn't owe it to me any more." The decision goes on to say (Reads): "It is under this principle we have \* \* \*." In other words, the rule says, admit it, don't lose it, and then if somebody wants to criticize and say it bears no great weight, let them do it, but admit it is better than to do it than to lose the information the declarant gave out.

As I say to your Honor, I do not want to appear smug or smart, but it is very clear to me what we are concerned with here is not, is there an opportunity for somebody else to give us some information about the transaction as to whether a man paid any part of the debt or not. There are probably fifty other people who can say something about it. The court and the rule says that is not it. The test is, is there any other way of getting better information from this fellow who says, "My obligation has been cleared," who says, "Here is my declaration against interest." I will concede if there was a letter in existence that this man wrote, or a receipt in existence, or his endorsement on a check, or some memorandum or notation, that would be the best evidence, if we could identify Mr. Jeffress' handwriting, better than his wife giving testimony he

told her something, but the fact of the matter is there is no other evidence, there exists no such better evidence than her statement there was a declaration of interest.

What did Mrs. Badonavitz have? All we had in the Badonavitz case was this—a man says to his wife, “I am going down to the bank to buy a cashier’s check to pay back Remmer five thousand dollars I owe him,” and in support of that there appears here a banker who produced what? At approximately the same time a cashier’s check that was purchased by Mr. Badonavitz and made in favor of Mr. Remmer for the amount of money involved.

Now here, may it please the Court, we have in support of this declaration against interest that a man makes to his wife what? We have a check that was paid to Remmer by a cashier or bookkeeper, accountant, who testified here the Bank Club owed Mr. Remmer 29 thousand dollars—“We made him a check for that amount but he underwrote another man’s obligation, so we retained 23 thousand of that 29 thousand,” and that other man was Mr. Jeffress, and that is supporting evidence over which we had no control, a check that had gone through the bank and records that showed the turnover of these things, supporting, corroborating evidence, over which we had no control.

I submit, your Honor, it is most detrimental to the defense in this case if we are shut out in the face of the showing we have made here and in the face of the universal recognition of this rule, it is

most detrimental to the defense if we are not given our right under this rule, if your Honor does not admit this evidence. I submit it.

The Court: I would like to see that volume of *Corpus Juris Secundum*, Vol. 31. The objection is sustained. I just won't accept that statement of the rule. "From the same source," I would go along with that. Bring in the jury.

Afternoon Session

February 8, 1952—3:10 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MRS. JEFFRESS

resumes the witness stand on further

Direct Examination

By Mr. Gillen:

Mr. Gillen: May the record show that your Honor has sustained the objection of the prosecution to the question asked of Mrs. Jeffress this morning, concerning a conversation she had with her intended, later, husband, Mr. Robert Jeffress, on the occasion mentioned in 1947?

The Court: The record will so show.

Q. Mrs. Jeffress, this morning you described an incident of your husband, prior to your marriage, I believe in the month of January, 1947, prior to the time that you became the wife of Mr. Robert Jeffress, in your presence and with your assistance

(Testimony of Mrs. Robert Jeffress.)

looking through his papers for some letter, running across a [2674] piece of paper which was folded over in letter fashion, which he gave to your sister for safekeeping for him, and do you know whether or not your sister placed that piece of paper in your safety deposit box?      A. She did.

Q. Which you identified as having rented with your sister in the Anglo California Bank in January of 1949?      A. Yes, she did.

Q. Now, when was the next time that you saw that piece of paper after it had been handed to your sister and taken away?

A. When Mr. Jeffress asked me to have my sister bring it in up to Mt. Rose.

Q. Can you fix the time that was?

A. Well, I am not too positive. It was between August, 1949, and June of 1950.

Q. Some time between August of 1949 and June of 1950?

A. Yes. I think it was in the winter of 1949 but I am not sure of that. I am not positive.

Q. You were living at Mt. Rose at that time with Mr. Jeffress?      A. Yes.

Q. And of course you had then been married some two years?      A. Yes.

Q. And did you communicate with your sister?      A. Yes.

Q. And in what manner did you communicate with your sister? [2675]

A. By telephone.

Q. You asked her to bring the note up?

(Testimony of Mrs. Robert Jeffress.)

A. The next time——

Mr. Campbell: Objected to as leading and suggestive.

The Court: Objection sustained. The answer may go out.

Q. Well, what did you say to your sister on the telephone?

Mr. Campbell: Objected to as hearsay.

The Court: Objection sustained.

Mr. Gillen: Withdraw that.

Q. This telephone conversation you had with your sister was from where to where?

A. It was from the Christmas Tree on Mt. Rose to my home in San Francisco.

Q. That is the 11th Avenue flat which you occupied with Mr. Jeffress? A. Yes.

Q. Following that conversation did your sister arrive at Mt. Rose?

A. Yes, some time later.

Q. And when your sister arrived, did she have with her the piece of paper that had been entrusted to her by your husband? A. Yes.

Q. And that is the piece of paper that you identified this morning as looking similar to defendant's Exhibit A-1, the Remmer note to Robert Jeffress? [2676] A. Yes.

Q. When your sister arrived with that same piece of paper, did you unfold it and read it at that time? A. No.

Q. What did you do with the piece of paper?

A. I put it in the dresser drawer.

(Testimony of Mrs. Robert Jeffress.)

Q. Did you call your husband's attention to the fact that this piece of paper had arrived?

A. No, not at that time.

Q. Did you at any later time call to your husband's attention the fact that the piece of paper had arrived?

A. Yes.

Q. Did you ever turn that piece of paper over to your husband?

A. Yes.

Q. Can you tell us approximately when that was, how much later?

A. It was either, as I said, in the winter of 1949 or the early part of 1950. I think it was the winter of '49.

Q. Now, can you fix it this way—approximately how long after your sister brought the paper to you and gave it to you that you turned it over to your husband?

A. I would say a few weeks.

Q. Under what circumstances did you turn it over to your husband, voluntarily or by reason of request from him?

A. He asked me—

Mr. Campbell: Objected to as immaterial. [2677]

The Court: The answer may stand.

Q. He asked you. Now do you know what he did with that piece of paper when you turned it over to him?

A. He said he was taking—

Mr. Campbell: Just a minute.

Q. Do you know what he did with that piece of paper when you turned it over to him?

A. I presume he gave—

Mr. Campbell: Objected to—may she be instructed to answer of her own knowledge?

(Testimony of Mrs. Robert Jeffress.)

Mr. Gillen: I don't think counsel should be so severe.

Mr. Campbell: I do not mean to be severe on the witness but I want her to understand the situation.

(Question read.)

The Court: If you know, say yes; if you don't know, say no.

A. Yes.

Q. Did you see what he did with that note?

A. Yes.

Q. Did he take it in his hand? A. Yes.

Q. Did you see what he did with it?

A. Yes.

Q. What did he do with it?

A. He put it in his coat pocket. [2678]

Q. Do you know what he did with it after that?

A. Took it into Reno.

Q. Do you know what he did with it in Reno?

A. No, I do not.

Q. Did you accompany him into Reno on that occasion? A. No.

Q. Do you know whether or not he had the piece of paper when he returned from Reno?

A. No.

Q. Did you ever see that piece of paper again?

A. No.

Q. You did see a piece of paper, however, that you saw this morning that you say looked like the same piece of paper, is that correct? A. Yes.

Q. And I refer now to defendant's A-1?

A. Yes; a photostatic copy.



(Testimony of Mrs. Robert Jeffress.)

Q. The folded piece of paper I showed you you never saw the original again excepting this morning you saw this piece of paper which you say looked like the one that was in your possession?

A. Yes.

Q. Now, Mrs. Jeffress, I understand from your testimony that you never personally read this note in its original form, is that correct? [2679]

A. Yes.

Q. You were recently, however, shown a photostatic copy of the note, is that correct, of Elmer Remmer to Robert Jeffress in amount of 50 thousand dollars, dated September 27, 1946?

A. Yes.

Q. Now, Mr. Jeffress, in the year 1943 Mr. Jeffress was a widower at that time, residing with his daughter, is that correct, upstairs from the flat where you were residing with your sisters as a tenant?

A. Yes.

Q. And you had developed, as I understand, a friendship with Mr. Jeffress and with his first wife and other members of his family over the years?

A. Yes.

Q. Were you acquainted with the fact that Mr. Jeffress had entered into a business enterprise in the year 1943?

A. Yes.

Q. And do you recall what that business enterprise was?

A. Yes.

Q. What was it?

A. Ambassador Bar in San Francisco.

Q. Were you acquainted with the fact whether

(Testimony of Mrs. Robert Jeffress.)

or not he ever sold his interest in that Ambassador Bar in San Francisco after acquiring an interest in 1943?      A. Yes. [2680]

Q. Do you remember when that was?

A. Either in 1945 or 1946, I don't remember which.

Q. Either in 1945 or 1946?      A. Yes.

Q. If the record should show that the bar was sold in January of 1946, would you say that that would refresh your memory?      A. Yes.

Q. Now, you stated that in 1948 your husband went to the Lake from San Francisco and made his home for some time with his son, James, is that correct?      A. Yes.

Q. What were the circumstances of his going to the Lake, do you know?

Mr. Campbell: Objected to as calling for hearsay.

Mr. Gillen: I am calling for her knowledge as to why he went to the Lake.

The Court: She may answer the question.

A. He bought an interest into the Christmas Tree at Mt. Rose.

Q. Who bought the interest, Mr. Robert Jeffress or Mr. James Jeffress?

Mr. Campbell: Objected to as calling for conclusion.

The Court: She may answer if she knows.

A. James Jeffress.

Q. And did Mr. Robert Jeffress, your husband, go to work there at the Christmas Tree? [2681]

(Testimony of Mrs. Robert Jeffress.)

A. Yes.

Q. For his son? A. Yes.

Q. And that occasioned his moving up and living with his son and remaining in Nevada?

A. Yes.

Q. Did you at times come up and visit here for extended visits? A. Yes.

Q. Did you finally move up here? A. Yes.

Q. And when was that?

A. That would be August of 1949.

Q. How long did you remain a resident here?

A. Until June of 1950.

Q. And then did you and Mr. Jeffress return to San Francisco? A. Yes.

Q. Was it 1950 or 1951 Mr. Jeffress passed away? A. 1950.

Q. So at the end of that year Mr. Jeffress passed away? A. Yes.

Q. Now, Mrs. Jeffress, were you at any time interviewed by any representatives or agents of the Internal Revenue Department? A. Yes.

Q. Who was the first person who interviewed you and about what time was it, if you can fix it? [2682]

Mr. Campbell: Objected to as incompetent and immaterial, if the Court please.

The Court: Objection sustained.

Q. Let me ask you this—were you at any time interviewed by any representative or agent of the Internal Revenue Department concerning the in-

(Testimony of Mrs. Robert Jeffress.)

come tax case of Elmer Remmer, the defendant in this case?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Mr. Gillen: I would like to be heard on that, if the Court please.

The Court: We will excuse the jury until Monday morning.

Mr. Gillen: I do not like to do that. I think I can say as to my reason without in any wise prejudicing the jury. There has been some evidence here, may it please the Court, offered by the prosecution as to the rather exhaustiveness of the investigation that had been conducted in the matter of the Remmer tax problem. These questions are for the purpose of refuting, in some degree, that very contention and specifically I want to establish—and I can do so by a written statement that is in the hands of the government—dispute the contention of the exhaustiveness of their investigation, that this lady was never asked when the 50 thousand dollar obligation was paid. She was never asked that question, which is a vital [2683] point in connection with the prosecution of this case and the establishing of the net worth.

Mr. Campbell: I submit, without conceding the statement made by counsel, what the witnesses were asked or were not asked, if we are going into those collateral matters we could be here until doomsday.

Mr. Gillen: We have only been going a couple of days.

(Testimony of Mrs. Robert Jeffress.)

The Court: Objection sustained.

Mr. Gillen: I will ask counsel for the prosecution, through your Honor, to produce the written statement that was taken from Mrs. Jeffress concerning this matter, so I may examine it and possibly offer it in evidence.

Mr. Campbell: I object to that. The witness is here on the stand. Has been produced to answer questions.

Mr. Gillen: I am trying to ask her the questions, counsel is objecting and I ask for the production of the written statement that was signed, the statement given about this matter by Mrs. Jeffress, so I may examine it and offer it to your Honor as a possible bit of evidence.

The Court: I think if there is any signed statement, it should be given to counsel.

Mr. Campbell: I have no objection if that is the Court's position.

The Court: Yes, if it relates to this present case.

Mr. Gillen: Oh, yes; it is concerned with this matter. [2684]

Mr. Campbell: This document, consisting of six handwritten pages, may be marked for identification.

The Clerk: 187 for identification.

Mr. Campbell: May I preliminarily identify it through the witness?

Mr. Gillen: I wish I could examine it. I asked that it be produced, your Honor, and I think it would be proper that I be permitted to examine it.

(Testimony of Mrs. Robert Jeffress.)

The Court: Very well.

Q. Now, Mrs. Jeffress, I am going to show you a sheath of yellow pages produced here by the prosecution under the Court's order, consisting of six pages, and on the last two pages there appears a purported signature, "Edna Jeffres," the entire six pages being written in handwriting. I ask you to look at those last two pages and tell me whether or not you recognize either or both of those signatures, "Edna Jeffress"? A. Yes.

Q. Do you recognize both of those signatures?

A. Yes.

Q. Whose signatures are they? A. Mine.

Q. Now, the rest of the handwriting on these six sheets, will you glance over them. Can you tell us, if you know, who wrote those six pages other than the two signatures in your own [2685] handwriting?

A. No, I don't recognize it.

Q. Did you see those six pages written in your presence? Did you see anybody write those pages?

A. No.

Q. I do not think you understand my question. When you were interviewed and gave the information which you signed in these six pages, two different signatures, who interviewed you?

A. The one with my signature was done in Mr. Campbell's office. I called at Mr. Campbell's office.

Q. Do you see the man here who interviewed you? A. Yes, that gentleman.

Mr. Campbell: Mr. Shelton.

(Testimony of Mrs. Robert Jeffress.)

Q. When Mr. Shelton interviewed you did he write down what you said to him? A. Yes.

Q. Did he write it down on yellow sheets of paper? A. Yes.

Q. Would you just read through those yellow sheets, fully or sketchily, as you desire, and see if you recognize what is written down there as being generally what Mr. Shelton interviewed you about? Possibly Mr. Campbell would stipulate Mr. Shelton conducted the interview and that is his handwriting on those pieces of paper?

Mr. Campbell: Oh, yes. [2686]

Mr. Gillen: Then we do not have to bother.

Q. Now, the date of the first sheet there is what?

A. November 21, 1951.

Q. Do you recall that as the date that you were interviewed by Mr. Shelton? A. Yes.

Q. Did you know at that time that you were talking to Mr. Shelton?

A. I thought I was talking to Mr. Shelton—no, I thought I was talking to Mr. Campbell.

Q. Why do you think that?

A. Because I was called to Mr. Campbell's office.

Q. You thought Mr. Shelton was Mr. Campbell. All right.

Mr. Gillen: I will offer this, may it please the Court, as defendant's exhibit next in evidence.

Mr. Campbell: We have no objection.

The Court: It may be admitted in evidence. 187 will be admitted as K-1.

(Testimony of Mrs. Robert Jeffress.)

Mr. Gillen: With the Court's permission, I will read this exhibit to the jury. I am going to read, may it please the Court, the original with the assistance of a typewritten copy. The reason I am reading the original is that there are certain corrections which have been made as the matter progressed. Partly in pencil and partly in ink, the statement reads as follows: (Reads "' \* \* \* Helen Elliott \* \* \*'.") May I interrupt [2687] and ask at this point to whom did you refer when you stated to Mr. Shelton in this statement that you told Mr. Golden that Mr. Jeffress gave the note to an attorney in Reno?

A. I beg your pardon?

Q. To whom did you refer when you mentioned the name Mr. Golden? Did you refer to Mr. Golden, the lawyer here?

A. Yes, I did.

Q. You had had a telephone conversation with Mr. Golden prior to that time?

Mr. Campbell: Objected to as leading and suggestive.

Mr. Gillen: I will withdraw that.

Q. When did you tell Mr. Golden that Mr. Jeffress had given the note to an attorney in Reno?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Mr. Gillen: (Continues reading exhibit).

Q. Now, Mrs. Jeffress, on the occasion that you say that you place as early in 1947 that your husband told you that he was going to the bank to get



(Testimony of Mrs. Robert Jeffress.)

some money to lend Mr. Remmer, are you positive that that was the date?

Mr. Campbell: Objected to as an attempt to impeach his own witness, if the Court please.

The Court: Objection sustained.

Mr. Gillen: All right, we will reach it in another way. I think that is all. [2688]

Mr. Campbell: No cross-examination.

(Witness excused.)

(Jury and alternate jurors admonished and recess taken at 3:45 p.m.) [2689]

Monday, February 11, 1952—10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

Mr. Thompson: At this time, your Honor, I would like to report that Mr. Campbell is ill this morning and will be unable to attend the trial. He expects to be here tomorrow.

Mr. Avakian: Your Honor, by previous arrangement the defense agreed to arrange for photostats of three ledger cards which were presented here in connection with the testimony of Mr. William Remmer and the arrangement, I believe, that photostats could be submitted as the exhibit and the original returned to Mr. Remmer. That is Exhibit 186.

Mr. Golden: We are withdrawing the originals of 186.

The Court: Very well.

Mr. Avakian: In addition, your Honor, when the witness from the First National Bank of Nevada, Mr. Waldo, was on the stand, it was arranged that he would submit a photostatic copy of the signature card in the account of the Cal-Neva Corporation in the name of Cal-Neva Lodge, and we have that here and in view of the fact Mr. Campbell requested that he produce photostatic copies of two deposit slips, showing deposits in the Cal-Neva account, one in the amount of \$47,300 on October 26, 1946, and the other in the amount of \$78,634.29 on December 7, 1946, we have both of those deposit slips in photostat form [2690] also and are producing them at the request of the prosecution at this time.

Mr. Thompson: Thank you, Mr. Avakian. We offer them in evidence as part of exhibit of Cal-Neva Lodge account.

Mr. Golden: I think the signature card is already in as 185 and the ledger sheet is part of defendant's Exhibit I-1.

The Court: Exhibit 185 has been admitted and it includes that signature card.

Mr. Golden: It is the signature card at the date the bank account was opened and my recollection is it was submitted the other day and we are now offering the photostatic copy. Then the balance of the documents, I believe, are defendant's Exhibit I-1.

Mr. Thompson: I suggest the two deposit slips, one bearing date October 26, 1946, in amount of

\$47,300 for the Cal-Neva Lodge account, and the other dated December 7, 1946, showing deposit of \$78,634.29 in the Cal-Neva Lodge Account be made a part of Exhibit I-1.

The Court: Is that satisfactory?

Mr. Golden: That is agreeable.

Mr. Avakian: In connection with the deposit slips showing deposit on December 7, 1946, the deposit slip shows a payment of that deposit and check in the amount of \$74,678.29 and prosecution's Exhibit 173, which is already in evidence, which consists of exchange of correspondence between Mr. Weaver and [2691] Mr. Semenza in 1949, regarding that deposit, states that that particular check represented a transfer of funds from another bank account of Cal-Neva, Inc., in the same bank, carried in the name of Cal-Neva, Inc., to the bank account of Cal-Neva Lodge, and we have obtained from the bank a photostatic copy of the ledger card of the Cal-Neva bank account which was carried in the name of Cal-Neva, Inc., showing that on that same date there is a withdrawal of that account of the entire balance of that account, namely, \$74,678.29, and in order that the full picture may be complete, we would like to offer that in evidence.

Mr. Thompson: We have no objection, your Honor. In that connection, I would like to suggest that a letter from Mr. Waldo, explaining certain alterations in the transfer of the ledger account be made a part of the exhibit.

Mr. Avakian: Yes, I would suggest that, too.

The Court: The ledger account with the letter

attached is admitted as Defendant's Exhibit L-1.

Mr. Avakian: I would like to call the jury's attention to one item of the letter part, if I may.

The Court: Yes, sir.

Mr. Avakian: Defendant's Exhibit L-1, which is the ledger account of the bank, First National Bank of Nevada, in the name of Cal-Neva, Inc., shows that balance in that account on December 7, 1946, was \$74,678.29 and it shows a [2692] withdrawal of that same amount on that same day, leaving a balance of zero, and the letter attached to that exhibit on the letterhead of the First National Bank, dated February 9, 1952, addressed to me, states as follows: (Reads from exhibit), and I think the deposit slip which was presented this morning from that Cal-Neva account shows that this 74 thousand dollar item was deposited in that other Cal-Neva account.

Mr. Thompson: So stipulated.

Mr. Gillen: May it please the Court, on Friday last there was present in court as the next witness to be called by the defense, Mr. James Jeffress. Mr. James Jeffress is the son of the late Robert L. Jeffress and he is the young man who is referred to by Mrs. R. R. Jeffress, the widow, and he is the young man also who operates the Christmas Tree. Now, the first occasion he was able to get in here was Friday, due to snow conditions up there. We didn't reach him on Friday afternoon and this morning about 7:30 we received a telephone call from him at Reno, advising us he was hopelessly snowed in and he would be unable to get through

to come to court this morning. May I suggest this to your Honor, Mr. James Jeffress is being called to give testimony which raises the identical issue which was presented to your Honor in the matter of the testimony of Mrs. Jeffress, with relation to conversation with her late husband, in the matter of testimony of Mr. Woodburn, Sr., and in the matter of testimony of Mr. Graham, and it struck me, that [2693] as a practical matter and in the interest of saving time, we would assume that your Honor would pass upon the testimony of this young man the same as to those other witnesses with relation to conversations with a person now deceased, an alleged declaration against interest, so I will ask your Honor's suggestion—my suggestion would be, if your Honor feels that you would pass on this identical point and sustain an objection to that testimony, that we could make an offer of proof for our record and could make that any time during the day, in which event we would not ask Mr. Jeffress to return, because he may be snowed in for some time, from the appearance here.

The Court: I can see no objection to that procedure. Have you any objection to that, Mr. Thompson?

Mr. Thompson: We have no objection to that procedure, your Honor.

The Court: We will take that up later. You remind me of it.

Mr. Gillen: Yes, your Honor. Then the defense, your Honor, will call as its next witness Mr. John R. Golden.

JOHN R. GOLDEN

being duly sworn, testified as follows:

Direct Examination

By Mr. Gillen:

Q. Will you state your name?

A. John R. Golden.

Q. Will you state your residence?

A. 99 Fernwood Drive, San Francisco. [2694]

Q. Will you state what is your business or profession?

A. I am a lawyer.

Q. How long have you been practicing your profession?

A. Over twenty years, not counting time in the service; that, including the time I was in the army.

Q. How long were you in the army?

A. Under three years.

Q. By the way, as preliminary to some testimony which will arise later on, you at this time and since your service in the army, have you held a reserve commission in the army?

A. That is right.

Q. What is that commission?

A. Lieutenant Colonel.

Q. Will you state to what Bars or what departments are you admitted to practice?

A. Well, I am admitted to practice before the United States Court of Appeals for the 9th Circuit, United States District Court in California, all the courts in California, the United States Immigration Service, United States Court of Claims, possibly some others of minor importance.

(Testimony of John R. Golden.)

Q. Where do you conduct your practice?

A. Usually in San Francisco.

Q. Where are your offices?

A. In the Crocker Building, 33 Post Street.

Q. With whom are you associated? [2695]

A. With yourself, that is Mr. Leslie Gillen, and we have a couple of young men in the office, Mr. Halley and Mr. Supera.

Q. Are you acquainted with the defendant in this case, Elmer F. Remmer? A. Yes, sir.

Q. And did you and your associate afford professional services to Mr. Remmer at an earlier time in connection with matters other than the present case? A. Yes, sir.

Q. In what particular matters?

Mr. Thompson: If the Court please, we object on the ground it is irrelevant and immaterial, unless it is offered to show an unpaid account but otherwise I do not know what the materiality of the proof would be.

The Court: Objection sustained.

Mr. Gillen: The reason I asked the question with regard to other matters, it is preliminary and explanatory of some matters that have been before the court by testimony of other witnesses in regard to the determination of certain business activities and the reason for—

The Court (Interceding): Very well. The ruling will be vacated and you may answer the question.

(Testimony of John R. Golden.)

A. Well, as I recall the question, you asked me concerning matters previous to this case?

Q. That is right, previous to the income tax matter. [2696]

A. The particular matter was in connection with the Menlo Club in San Francisco, the same club which is talked about here.

Q. And that was in connection with a new interpretation placed on the law with regard to legal card games in San Francisco, is that right?

Mr. Thompson: Objected to as leading and also irrelevant.

Mr. Gillen: If I may explain to your Honor, I have this in mind. This establishes the reason for closing of an enterprise and the result of closing of that enterprise, the loss of some money not only to this defendant, but also to other partners in that enterprise.

Mr. Thompson: The only material fact is whether the enterprise closed or remained open and also the date of closing. So far as I am informed from the evidence so far, the Menlo Club was still operating on December 31, 1946, and anything that occurred thereafter is immaterial.

Mr. Gillen: There was some testimony developed and comment made about the fact that certain partners never got any money. We want to show that the enterprise, by reason of the interpretation of the law, was closed, to the loss of persons still invested in that enterprise.

The Court: We may be interested in whether or



(Testimony of John R. Golden.)

not the enterprise closed, but I can not see that we are interested in the reason why it closed. [2697]

Mr. Gillen: Very well. It would only be explanatory and not invite speculation by the jury.

The Court: I don't see why we are interested in that or why it might invite derogatory speculation against the defendant. The jury will understand that the Court rules that it was not material.

Mr. Gillen: All right.

Q. Mr. Golden, can you tell us when the Menlo Club closed?

A. In April or early May, 1948.

Q. Can you tell us whether or not the 186 Club closed at or about the same time under the same circumstances?

A. That is correct.

Q. Now, Mr. Golden, what was the first occasion upon which you and your associate were called upon to offer any professional services in connection with the income tax problem of Mr. Remmer?

Mr. Thompson: Objected to as immaterial.

The Court: Unless it is preliminary.

Mr. Gillen: It is preliminary.

The Court: We will hear the answer.

A. In February, 1950, when Mr. Remmer received a letter from—

Mr. Thompson: We object—the question has been answered.

The Court: Yes, it is answered.

Q. Can you tell us what gave rise to you and your associate coming into the case? [2698]

(Testimony of John R. Golden.)

Mr. Thompson: Objected to as immaterial. Calls for speculation.

The Court: Objection sustained.

Q. When you went into the matter, what was the first matter in connection with the case that demanded your attention?

Mr. Thompson: Objected to as irrelevant, has nothing to do with the issues in this case.

The Court: Objection sustained.

Mr. Gillen: Of course, I think, your Honor, that the first contact with the Internal Revenue man, Mr. Campbell, and so on, is material in view of the testimony that has been offered here and admitted by the Court, to the effect that there was a lack of cooperation insofar as the defendant himself was concerned and insofar as the attorneys who had represented Mr. Remmer were concerned. There was testimony to the effect that there was great cooperation in the matter of turning over to the government, the Internal Revenue agents, the books and records of the various enterprises for their examination and investigation, but we have other testimony that subsequently there was a refusal to permit the defendant to be interviewed by the Internal Revenue men, there was a lack of cooperation by certain lawyers in the case, and we feel that we have a right to refute that by showing what was done with Mr. Golden and his associate, in the person of myself, and, at a subsequent time, Mr. Avakian, who was called in as an expert tax lawyer by [2699] us, what was done in connection

(Testimony of John R. Golden.)

with the case and the matter of cooperation at that time.

Mr. Thompson: Well, the issue, your Honor, is not one of cooperation. The matter of Mr. Remmer's refusal to answer questions for the Revenue agents was material offered to show that the agents had tried to interview him in the course of their investigation and had conducted as thorough an investigation as possible and the fact of his refusal to make himself available as a material thing, what Mr. Golden may have thought or done about it, does not have any bearing upon the issues in this case.

Mr. Gillen: Counsel is not clairvoyant and can't very well determine in advance that it had no bearing on the issues. We not only have sworn oral testimony, but also extensive correspondence.

The Court: What is the question?

(Last question read.)

The Court: Objection sustained.

Q. Let me ask you, Mr. Golden, did you request a conference with Mr. Campbell and the Internal Revenue men in connection with the Elmer Remmer tax problem? A. Yes.

Mr. Thompson: May the answer go out, your Honor, to give me an opportunity to object?

The Court: Yes. [2700]

Mr. Thompson: I make the same objection.

The Court: Objection sustained.

Q. Did you have a conference with Mr. Campbell?

Mr. Thompson: I make the same objection.

(Testimony of John R. Golden.)

The Court: Same ruling.

Q. Did you become acquainted with whether or not there was more than one problem that was faced by Mr. Remmer in connection with those tax problems?

Mr. Thompson: Same objection, also calls for his conclusion.

The Court: Objection sustained.

Mr. Gillen: Well, I will ask counsel, through the Court, if he will not stipulate——

Mr. Thompson: I object to requesting counsel to stipulate. If Mr. Gillen wants to make an offer of proof——

The Court: Yes, if there is to be any objection, we might excuse the jury and find out what the stipulation is or counsel might communicate privately.

Mr. Gillen: I will withdraw the request for stipulation at this time.

Q. Was it brought to your attention in any manner that a criminal prosecution was being considered in connection with the Remmer tax problems?

Mr. Thompson: I make the same objection.

The Court: Objection sustained. [2701]

Mr. Gillen: What is the ground of the same objection? I just hear same objection, same objection.

Mr. Thompson: It is irrelevant and immaterial, has nothing to do with the issues in this case, which relate to whether or not Mr. Remmer wrongfully attempted to evade his income tax for the years 1944, 1945, and 1946.

(Testimony of John R. Golden.)

Mr. Gillen: Let us find out——

The Court: Yes, that is the basis of the Court's ruling.

Mr. Gillen: Let us find out, as a preliminary matter, may it please the Court, because if we do not lay the preliminary grounds that enables the jury to pick up the thread of this testimony here, the testimony on other material matters wouldn't sound like anything.

The Court: I can not see where this question is material. The ruling will stand.

Mr. Gillen: Now, so I may be guided and not call for continuous objections, the contention is, and your Honor has ruled, that it is immaterial whether Mr. Remmer and his attorneys——

The Court: I will rule on questions and I will rule on subsequent questions as they arise. I do not want to indicate a line of ruling in advance.

Q. Mr. Golden, were you ever requested at any time by Mr. Campbell to prepare a financial and net worth statement of the defendant, Elmer Remmer, to the government, in order that the government might determine whether or not there was [2702] any basis for the contention of fraud in connection with the Remmer tax problems?

Mr. Thompson: I make the objection it is incompetent, irrelevant and immaterial and nothing to do with the issues in this case, and also the question is leading, contains a subject matter which would be included in the witness' answer, if he was permitted to answer.

(Testimony of John R. Golden.)

Mr. Gillen: It is very material, your Honor. There is contention here there has been no cooperation in matters of assisting, outside of originally giving the books, which they concede was done cooperatively, and also that Mr. Maundrell and Mr. Kyne, who looked after the books had cooperated with them to the extent of attending conferences and explaining matters in question in the books. However, beyond that there is a contention, and it was testified to by Mr. Weaver particularly, that there was a lack of cooperation to assist the government in arriving at any conclusion concerning a net worth of the defendant in this case and to assist the government in arriving at any conclusion regarding whether or not there was fraud or the absence of fraud. Now, we want to get that basis, your Honor, and establish in the record, then we can go on with the testimony, and I think it is only fair——

The Court: I do not recall any such testimony.

Mr. Gillen: You do not recall Mr. Weaver testifying that he requested an interview with Mr. Remmer in Mr. Thatcher's [2703] office?

The Court: Oh, yes; I recall that.

Mr. Gillen: That Mr. Remmer was present and that that was denied by Mr. Thatcher?

The Court: I recall that, yes.

Mr. Gillen: Now, we have an exhibit on the record here, Mr. Thatcher——

The Court (Interceding): But that has no relation to this question. Objection will be sustained.

(Testimony of John R. Golden.)

Mr. Gillen: Now, Mr. Weaver also testified, and we can find it in the transcript——

The Court (Interceding): I have ruled.

Mr. Gillen: This is another matter.

The Court: I have ruled.

Mr. Gillen: Your Honor will recall I was absent two days when Mr. Weaver testified and Mr. Avakian just called my attention——

The Court (Interceding): There is nothing before the Court. I do not like these discussions in the presence of the jury. If you want to argue, I will send the jury out. There is nothing to argue about because there is nothing before the Court.

Mr. Gillen: I do not want to be placed in the position of always sending the jury out.

The Court: I do not want to, either, but I do not want [2704] any arguing in the presence of the jury.

Q. Did you, Mr. Golden, ever offer to undertake the preparation and furnishing to Mr. Campbell of a net worth statement of the defendant, Elmer Remmer?

Mr. Thompson: Same objection.

The Court: Objection sustained.

Q. Mr. Golden, are you acquainted with a man in San Francisco by the name of Jay Friedman?

A. Nathan Jay Friedman.

Q. What is that man's business or occupation?

A. He is a certified public accountant.

Q. Was he formerly employed by the United States government?      A. Yes.

(Testimony of John R. Golden.)

Q. And did you at any time negotiate with Mr. Nathan Jay Friedman and have him make any survey of the Remmer records in the hands of the United States government for any reason?

A. Yes.

Mr. Thompson: Objected to as immaterial.

The Court: Objection sustained.

Q. Did you at any time, Mr. Golden, undertake to obtain a release of a portion of the financial assets of the defendant Remmer, release from a lien which had been placed on them by the government, and offer to post a surety bond to protect the government so that funds would be available to employ accountants to prepare a net worth statement to supply the government? [2705]

A. Yes——

Mr. Thompson: May the answer go out so I may have an opportunity to object?

The Court: Now, you are a lawyer, Mr. Golden, you shouldn't hurry those answers. It is all right for a layman perhaps. The answer will be stricken and objection sustained.

Mr. Thompson: Entirely irrelevant, your Honor.

The Court: The answer is stricken and objection is sustained.

Q. In connection with the Remmer tax problems between February of 1950 up until the time that the indictment was filed, as I recall, April 9, 1951, how many government men or persons in official positions did you confer or correspond with?

Mr. Thompson: Objected on the ground it is immaterial and irrelevant and has nothing to do with the case.



(Testimony of John R. Golden.)

The Court: Objection sustained.

Mr. Gillen: Now——

The Court (Interceding): There is nothing before the Court.

Mr. Gillen: You ask the people——

The Court: The Court has ruled.

Mr. Gillen: You don't want to hear from me?

The Court: I will, yes; we will send the jury out.

Mr. Gillen: Well, I am in the position, as much as I [2706] do not want to discommode the jury——

The Court: Well, I do not want to either. If you do not want to proceed——

Mr. Gillen: Well, I can't proceed.

The Court: What are you talking about now?

Mr. Gillen: I want to explain my position.

The Court: The Court takes full responsibility for sending the jury out.

Mr. Gillen: If I am not able to explain my position, I will have to do it outside of the hearing of the jury.

The Court: All right. Jury and alternate jurors admonished and excused at 10:40 a.m.

(In the absence of the jury.)

**OFFER OF PROOF REGARDING JAMES  
JEFFRESS AND JOHN R. GOLDEN**

(Feb. 11, 1952—Notebook 342, PP 53-79.)

The Court: I think it might be a good time to make any offer of proof. Perhaps this present situation can be taken care of by offer of proof. There

is nothing before the Court. No reason why I should listen to you.

Mr. Gillen: Well, it is my understanding——

The Court (Interceding): I have ruled and there is no question before the Court but if you have an offer of proof I will be glad to hear it, but I am not going to sit and listen to argument on any questions I have ruled on. I am always glad to hear, if there is a question which in my mind is a difficult one, hear debate and I am willing to set aside a ruling, but I am not going to sit and listen to an argument on matters which do not appear to me to be in question. You may take an exception.

Mr. Gillen: What is your Honor's pleasure as to which matter you would entertain—as to the offer of proof of James Jeffress or offer of proof——

The Court: Any order you take would be satisfactory to me.

Mr. Gillen: I think, may it please the Court, that we might as well, so shortly after the testimony of Mrs. Jeffress, give this offer of proof of James Jeffress.

The Court: Very well.

Mr. Gillen: May it please the Court, the defense offers to prove by the testimony of James Jeffress, whom, as I stated to your Honor, was here on Friday and whom I explained heretofore to your Honor advised us this morning that he is now snowed in and unable to reach court today, the defense offers to prove by his testimony that in 1940, his mother, the first wife of Robert L. Jeffress, his father, Robert L. Jeffress, being the person referred to in

connection with the \$50,000 loan to Mr. Remmer in 1946, to augment the account of the Cal-Neva Lodge; that his mother died and pursuant to her Lodge; that his mother died and pursuant to her expressed request, whatever of the community property accumulated by her husband, Robert L. Jeffress, and herself she desired to have distributed equally between her son, James Jeffress, the witness who was unable to reach here today, and her daughter. If I recall, that young woman's name was mentioned by Mrs. Jeffress as Carolyn Jeffress. That Mr. James Jeffress signed over to his father an authority to use his share of the assets, which as I am informed and the testimony would be, was not in actual cash, but was interest in real property and also in stocks. The testimony of Mr. James Jeffress would show that he entered the United States Army in 1941, and that he was stationed at Camp Roberts, which is located near Paso Robles, about 200 miles south of San Francisco.

The testimony will show that in February, 1943, he had a discussion with his father, because of the fact that he was in the army and expected that he might be transferred to some other point, regarding their finances, particularly his interest in his mother's share of the community estate and that at that time in 1944, July of 1944, prior to his being transferred to another point, namely a camp in Missouri, that his father told him that in February of 1943, that is after Robert L. Jeffress had purchased a half interest in the Ambassador Bar in San Francisco, that he had borrowed the sum of ten thousand

dollars from Elmer Remmer and that he then, in July, 1944, still owed Elmer Remmer the ten thousand dollars. Mr. Jeffress would testify that he transferred from Paso Robles to a camp in Missouri in December of 1944, and that he subsequently thereto was sent overseas to the European theatre of war and that he returned from overseas and was discharged from the army in October of 1945. Mr. James Jeffress would testify that it came to his attention that in the summer of 1947, and for some time thereafter, that Mr. Robert L. Jeffress had lost heavily at gambling. Mr. James Jeffress would testify that it came to his attention that in September of 1946, that there was the sum of \$50,000 loaned by his father, Robert L. Jeffress, to Elmer Remmer, for the purpose of augmenting the Cal-Neva bank account and that that matter came to his attention because at that time Mr. James Jeffress was working at Cal-Neva Lodge and that funds became short in the bank account and Mr. Jeffress loaned Elmer Remmer \$50,000, which was deposited in the bank account, and your Honor recalls there was testimony and exhibits in the way of telegraphic transfer from the Bank of America.

The Court: What year was that in, Mr. Gillen?

Mr. Gillen: In September of 1946. If I recall, the loan was made, the money was withdrawn by Mr. Jeffress on September 27, 1946, and the actual credit under the telegraphic transfer was made at the First National Bank of Nevada on the 28th of September of 1946.

Mr. James Jeffress would testify that the follow-

ing year, when he learned that his father was gambling heavily and losing, that it also came to his attention that some of his father's gambling obligations had been underwritten and paid off by Elmer Remmer. Mr. James Jeffress would also testify that in July of 1948, Mr. James Jeffress, having for some time been employed or had a gaming concession at the Lodge known as the Christmas Tree, that he negotiated to purchase the Christmas Tree with another partner and that he was in need of some cash to meet the down payment and that he went to his father and he asked his father if his father could supply him with any cash, in the way of either returning some of his mother's funds to him or making a loan to him, and at that time his father told him—this is declaration against interest, which we assume your Honor would rule on, because it is a debatable problem—that his father told him he was unable to give him any cash, that he had lost heavily the previous year in gambling and that he was practically broke. We offer to prove that Mr. James Jeffress would testify that he then asked his father specifically: "You loaned \$50,000 to Bones Remmer. Does he still owe you any of that?" and that Mr. Robert L. Jeffress stated to him: "Bones took up my gambling debts and paid me off last year," which would mean the year 1947.

Mr. James Jeffress would also testify that by other means and in another manner he was able to raise the necessary money and that he did, in fact, purchase an interest in the Christmas Tree in July of 1948, and that he took over the operating interest

in the Christmas Tree on August 1, 1948, and has been the owner of the Christmas Tree since that time up to the present time.

Mr. James Jeffress would also testify that in the year 1948, his father, being financially impoverished, that he employed his father in connection with the gaming activities of the Christmas Tree and that his father made his home there with Mr. James Jeffress and his family in 1948, and that Mrs. Edna Jeffress, who testified last Friday, came up and stayed from time to time with him.

Now, may it please the Court, I have in mind the number of things that I have referred to that Mr. James Jeffress would testify to would obviously not be objectionable in themselves, but those matters were referred to—they are only preliminary to corroborate matters—they had to be referred to in order for your Honor to follow the important matters which would be the existence of the conversations with his now deceased father, in which his now deceased father made declarations against his own interest.

The Court: That is the substance of the offer of this declaration at this point?

Mr. Gillen: Yes, your Honor. In each instance where there was a conversation included in the declaration against interest, that is the reason I suggested the offer of proof.

Mr. Thompson: If the Court please, we object to the offer upon the ground it calls for hearsay evidence and that the proof offered is not the primary

evidence of the transactions which are sought to be proven.

The Court: The offer will be rejected. Objection to the offer is sustained.

Mr. Gillen: Very well. Now in regard to the testimony of Mr. Golden, your Honor, this is rather by way of explanation, your Honor, than an offer of proof. We have some testimony that came primarily from Mr. Weaver. Other agents had testified previously that in the preliminary work, investigating the tax problems of Elmer and Helen Remmer, that they had received fullest cooperation, in that Mr. Maundrell and Mr. Kyne and others turned over the books and records to them, and they also made statements and conferred with them on occasions, that they were required to. We have testimony, however, particularly from Mr. Weaver, to the effect that he was endeavoring to obtain a statement or have a conference with Mr. Remmer, the defendant, and that an arrangement was made to meet at Mr. Thatcher's office, Mr. John P. Thatcher being the one who attended to that arrangement, and that he appeared in Mr. Thatcher's office with certain other members of his staff, Mr. Morgan and Mr. Harkness and the young lady stenographer, and he contended at that time not only did Mr. Thatcher refuse to permit Mr. Remmer to confer or make a statement to him, but also Mr. Remmer specifically himself—Mr. Weaver contending Mr. Remmer was present in Mr. Thatcher's office—refused to make a statement. Mr. Weaver



didn't testify to the prepared statement that was handed to him by Mr. Thatcher.

Now we are prepared at this time to refute that particular testimony of Mr. Weaver's. We believe that we have refuted, by the testimony of Mr. Thatcher, the statement of Mr. Weaver and the contention that Mr. Remmer was actually present and in their presence at the time this refusal was made. We believe that that has been refuted by Mr. Thatcher, who said that in his opinion Mr. Remmer was not present in the office and never was in the presence of Mr. Weaver and the other agents.

The Court: Have you in mind the date of the conversation that was had with Mr. Thatcher?

Mr. Gillen: It was in April of 1948.

Then, if your Honor will recall, in Mr. Thatcher's testimony he stated that prior to the planned or agreed meeting of April 8, 1948, that he had an interview with Mr. Remmer and with Mr. Maundrell concerning the Remmer enterprises and that in anticipation that some situation might arise wherein the matter of fraud or criminal prosecution should be mentioned, as contemplated, that he had prepared in advance a statement which was offered here as Defendant's G-1, a typewritten statement, in which he, as attorney at that time for Mr. Remmer, or one of the attorneys at that time for Mr. Remmer, had expressed his position, and your Honor will recall, without taking the time to read the entire statement—I can hand it up to your Honor—Mr. Thatcher's written statement said that Mr. Remmer would explain any specific matters that



the Bureau might state, if they would inform Mr. Thatcher what particular problems confronted them or they wanted clarified, because his personal investigation of the matter had not disclosed any fraud, and if they would inform Mr. Thatcher of any specific instances any items or accounts or circumstances they wanted clarified that they thought were tainted with the appearance of fraud, that he would have Mr. Remmer do that.

Now Mr. Golden will testify that the first that we were called into the matter and began to actively participate in the matter was when Mr. Remmer received, under date of February 14, 1950, from Mr. Campbell a letter, advising him that the office of Mr. Campbell had under consideration a recommendation involving the institution of criminal proceedings against Mr. Remmer for violation of the Internal Revenue laws, with respect to his income tax, and the letter also went on to say that "a conference will be granted at your request at a date agreeable to you," conference at Mr. Campbell's office.

Now Mr. Golden will testify that a conference was requested, and in fact more than one conference was had, and immediately Mr. Campbell advised Mr. Golden and specifically advised other counsel, including myself, that what he desired was a net worth statement from the taxpayer, Mr. Remmer. Mr. Golden would testify that he advised a net worth statement would be prepared and would be submitted to Mr. Campbell, but Mr. Golden pointed out that the plight of the defendant, Remmer, at

the time was that all of his assets, including cash, had been levied upon under a so-called jeopardy assessment, that the amount of assessment was something in excess of 800 thousand dollars, and, of course, the property assessed was considerably short of 800 thousand dollars, but it did encompass and embrace all of the assets of the defendant, and Mr. Golden pointed out that in order to prepare a net worth statement, as good a net worth statement as could be prepared under the circumstances, it would be necessary to employ the services of certified public accountants, and in order to employ certified public accountants, it would be necessary to have funds to pay them, and Mr. Golden suggested that if there was some way of releasing part of the assets that were under assessment by the government under the jeopardy assessment, that Mr. Remmer would arrange to furnish a surety bond in the full amount of money that the government would release. There was an item, if I recall correctly, there was one asset in the form of \$35,000 money that had come as part of the escrow money from the sale of Cal-Neva into the First National Bank of Nevada, and it was suggested by Mr. Golden that if \$25,000 of that, or the entire \$35,000 of it, could be released, that Mr. Remmer would furnish a surety bond from a regular surety company to insure the United States government against any loss for the amount that was released.

The testimony of Mr. Golden would show that Mr. Campbell told Mr. Golden that there were ways of getting funds released for just such purposes and

referred him to a gentleman by the name of Nickell, who was Deputy Collector of Internal Revenue at San Francisco, and the testimony would show that Mr. Golden did communicate with Mr. Nickell immediately and Mr. Nickell verified the fact that there was a procedure for release of funds from jeopardy assessment for the purpose of enabling a taxpayer to prepare defense or to supply information to the government in connection with his tax problems and that the usual procedure was to have a surety bond, either in the amount to be released, or, depending on the discretion and judgment of the Collector of the particular district, twice the amount. In other words, if we wanted to withdraw 25 thousand dollars, depending upon the judgment and administrative discretion of the Collector of the district, he could order a 25 thousand dollar surety bond will suffice or he could say, "I want \$50,000, twice the amount of money that I release."

Now Mr. Golden would testify that in contemplation of preparing such a net worth statement for Mr. Campbell, that it was discussed that the preparation of a net worth statement and the clarification of the affairs of Mr. Remmer for the government might very well solve the whole matter and obviate any necessity to go any further, excepting to make an adjustment under the civil claim of any unpaid tax that might be shown to be due. That in contemplation of that Mr. Golden engaged—because all the records were then in San Francisco in the hands of the government at 100 McAllister Street, I presume in the room Mr. Weaver mentioned—that Mr.

Golden had a Mr. Nathan Jay Friedman, a former Internal Revenue accountant, certified public accountant, who was at that time, and still is, in private practice as a certified public accountant in San Francisco, had him go and look at these records and make certain computations, determining what length of time and the amount of money it would take to properly investigate all of these records, with a view of preparing a net worth statement and furnishing it to Mr. Campbell.

Now, your Honor, it will be shown also by the testimony of Mr. Golden—it is my recollection your Honor stated that we would be permitted to that records other than the records produced here were in the hands of the government, and that we were permitted to see those records, that is, records in excess of what have been used here in this net worth matter. That Mr. Golden's testimony would also show the existence in the hands of the government of records that were never brought into this court and that were used in connection with the net worth theory that has been employed by the government in this case.

Now Mr. Golden's testimony would also show that in his conversation with Mr. Nickell, when Mr. Nickell informed him there were means provided for the release of assets that were under assessment, that the government would require a surety bond and that in all probability a surety company would require some collateral, and he wanted to know whether or not Mr. Remmer would be able

to furnish some collateral. Mr. Golden will testify that he told Mr. Nickell that he was almost certain that Mr. William Remmer, the brother of Elmer Remmer, would supply any collateral required, but that he would confirm that with Mr. William Remmer. Mr. Golden will testify that upon being told by Mr. Nickell that the amount of surety bond would be left to the discretion of the Collector of the particular district, which in this district would have been Mr. Douglas, in the Nevada district, that Mr. Golden, after his interview in confirmation of these facts with Mr. Nickell, confirmed the fact that Mr. William Remmer would be willing to furnish collateral required by a surety company and then Mr. Golden did communicate with Mr. Douglas, the Collector for the Nevada District, and requested Mr. Douglas to advise him what bond he would require for the release of the \$35,000 cash from the First National Bank of Nevada, that cash being money that was paid by the Adler interests to the First National Bank in connection with the purchase of Cal-Neva. There is correspondence available, but to give your Honor the sum and substance of it, Mr. Douglas stated that he would inquire into the problem, that he would advise Mr. Golden in the next day or two. If I recollect, this was not only a telephone call to Mr. Douglas, but also a letter to Mr. Douglas, and the next day or two, it would appear from Mr. Golden's testimony, and also supplemented by actual correspondence, Mr. Douglas advised by letter to Mr. Golden that they would release \$35,000 for the purpose of enabling Mr.

Remmer to pay for accountants and so on, if Mr. Remmer would post a surety bond for the full amount of the lien existing, namely, in the amount of \$867,373.52. If Mr. Remmer would post a surety bond in that amount, Mr. Douglas would release \$35,000 in cash.

Mr. Golden's testimony would be that he brought it to the attention of the government that in order to obtain such a bond, namely an amount of 867 thousand dollars, that the surety company, any surety company would want collateral in the amount of 867 thousand dollars and that they would require a premium of ten per cent of the amount of the bond, which would be something in excess of 86 thousand dollars, so in other words, under that offer made by Mr. Douglas and the government, if Mr. Remmer wanted to get 35 thousand dollars in cash, he would have to give 867 thousand dollars in collateral and 86 thousand dollars in cash to pay the premium, to get 35 thousand dollars. Mr. Golden pointed out that that was not only impractical but impossible, and Mr. Golden's testimony would show that repeated efforts were made on the basis of supplying a surety bond to obtain the release of 35 thousand dollars, so that he could pay the expenses of investigation by accountants, and also that he could pay some attorneys' fees and some other attendant expenses that necessarily would arise under the circumstances, and in the event this money was made available, that an honest and earnest endeavor would be made to supply the government with as complete a net worth statement as could be

gleaned from the records and prepared by competent certified public accountants.

Now Mr. Golden's testimony would show that this matter was carried to Washington, to Mr. Oliphant, who was the chief counsel of the Bureau of Internal Revenue at that time, it being called to our attention that insofar as any prosecution aspects of the case, that that belonged properly to the Department of Justice, and anything referring to payment of tax, release of funds under surety bond, properly belonged to the Treasury Department or the Internal Revenue, and Mr. Golden's testimony would show, your Honor—I am not now making formal offer of proof, I am merely explaining the testimony, the necessity of going into—

The Court: Haven't you made an offer of proof in all this time?

Mr. Gillen: I thought your Honor wanted to be informed.

The Court: I thought you were making an offer of proof.

Mr. Gillen: Well, your Honor, the record will show I initially told your Honor this was not by way of offer of proof, although I had to refer to testimony—

The Court (Interceding): I shouldn't have sat all this time listening if I thought it wasn't an offer of proof.

Mr. Gillen: I thought your Honor wanted an explanation of why Mr. Golden was on the stand and I think if your Honor will refer to my initial remarks, your Honor will see—



The Court (Interceding): Well, I misunderstood you. We will call the jury in.

Mr. Gillen: What is the situation?

The Court: I don't know. I don't know what you have been talking about.

Mr. Gillen: You don't know what I am talking about?

The Court: No. I know what you are talking about, but I don't know the purpose if it is not an offer of proof.

Mr. Gillen: The purpose was, as I stated, and if your Honor did not so understand, I should have been stopped before I talked, I said initially——

The Court (Interceding): It is not an offer of proof?

Mr. Gillen: No.

The Court: Very well.

Mr. Gillen: Does your Honor want me to make an offer of proof?

The Court: No.

Mr. Gillen: Well, then, we will only get into difficulties here, if your Honor hasn't learned anything from my actual——

The Court (Interceding): I don't want to place myself in the position of directing or suggesting to you how to carry on your case. •

Mr. Gillen: Let me ask your Honor this—from what I have told your Honor, is it your Honor's opinion now that all of these matters that I referred to in refutation of the contention that there was no cooperation from this defendant, further than initi-



ally furnishing his books and records to the government, is irrelevant?

The Court: I don't see any occasion for ruling. There is nothing before the Court.

Mr. Gillen: Your Honor has been ruling on it. Might I point this out to your Honor——

The Court (Interceding): I only rule on questions.

Mr. Gillen: May I point this out to your Honor. You see my only thought is, if your Honor rules on a prior objection, and your Honor rules on then a considerable number of other questions that are to be asked and give rise to irritation on your Honor's part, I am deliberately disobeying orders——

The Court (Interceding): Let us call the jury. Do you want to go on?

Mr. Gillen: I want to make a further observation without any jury.

The Court: If you have a question to ask this witness, fine.

Mr. Gillen: All right, I want to make an offer of proof.

The Court: All right, make an offer of proof.

Mr. Gillen: I just wanted to tell your Honor——

The Court (Interceding): I don't want to hear.

Mr. Gillen: How can your Honor possibly rule if you don't know what I am talking about? How does your Honor know, how can you know my contentions——

The Court (Interceding): I am not going to hear your contentions until they come up in the orderly

process of procedure. What is there before the Court here?

Mr. Gillen: There is this before the Court: I have told you that I am attempting to refute the testimony that gives an impression of guilt.

The Court: Just a minute—has there been a question propounded to which an objection has been made and the ruling still pending?

Mr. Gillen: Was there a question that I asked that was material——

The Court (Interceding): Just answer this question. Is there a question now pending before this Court on an objection?

Mr. Gillen: No, there isn't, I don't think.

The Court: Very well. Is there an offer of proof pending before the Court?

Mr. Gillen: Well, I will make an offer of proof.

The Court: Very well, I will be glad to hear it.

Mr. Gillen: If your Honor won't listen to anything else, I am compelled to make an offer of proof.

The Court: I would like to hear it.

Mr. Gillen: But I would like your Honor to receive that verified testimony to refute that evidence, insinuations of guilt.

The Court: If you want to make an offer of proof; otherwise I won't.

Mr. Gillen: All right. I might say that Mr. Golden's testimony would be quite lengthy and the offer of proof would take some little time.

The Court: All right, proceed.

Mr. Gillen: I do not know whether your Honor

would want to dismiss the jury until this afternoon, because I think it will take better than half an hour.

(Jury returned into court, admonished and excused at 11:20. Five-minute recess.)

11:30

(Defendant present.)

Mr. Thompson: Your Honor, I wonder whether this would be a proper time to take up the other matter you had in mind this morning regarding the bond, the subpoena from California.

The Court: You mean about that subpoena in San Francisco?

Mr. Thompson: Yes.

The Court: Well, I heard from the newspapers, of course, that the defendant had been subpoenaed to appear in another court as a witness, in the United States District Court for the Northern District of California.

Mr. Gillen: We spoke to your Honor about that matter this morning.

The Court: What do you have in mind that we should take up at this time, Mr. Thompson?

Mr. Thompson: I understood you made a suggestion to defense counsel regarding bond for production of the defendant.

The Court: I am going to make an order at each adjournment.

Mr. Gillen: Yes, I heartily agree with that, and I might state to your Honor that we were, and I

believe as the close of the day approached, to send a wire to the United States District Judge, advising him of our predicament as to the appearance of the witness and as to two or three exhibits that were called for, and we were going to send that wire Tuesday or Wednesday to Judge Lemmon. We did not know until we saw in the paper this morning what district judge was going to participate at that trial.

The Court: So there is nothing to worry about at this time?

Mr. Gillen: No, your Honor.

Now, may it please your Honor, in the interest of your Honor's time—everybody's time—may it be stipulated and agreed that all of the references that I have made by way of explanation to your Honor just before the recess, regarding testimony that would be given by Mr. Golden, be included and embraced in, by reference, the offer of proof that I now ask permission to make.

Mr. Thompson: That is satisfactory, your Honor.

The Court: Well, it will be so understood that the statement made in regard to Mr. Golden's testimony will be reinstated. This order I made to strike will be vacated.

Mr. Gillen: And it will be included in my offer of proof and I will go on from there, not to take up too much time.

The Court: All right, go ahead.

Mr. Gillen: Shall I proceed then?

The Court: Yes, sir.

Mr. Gillen: Mr. Golden will testify, your Honor, that at the request of Mr. Golden in the month of May, 1950, there was held an informal conference, at which conference were present Mr. Campbell, Mr. Brady, and Mr. Weaver for the government; Mr. Golden for the defendant, and Mr. Nathan Jay Friedman, the certified public accountant, who has heretofore been referred to, and that Mr. Campbell at that time advised Mr. Golden that the government contended that there were understated for 1945, 265 thousand odd dollars and there was contention of understatement for 1946, in amount of 190 thousand dollars and that those figures were obtained from the figures that were to be used in the civil claim for the payment of taxes against Mr. Remmer, and Mr. Campbell stated at that conference that if a criminal prosecution were determined upon, that the government would use the net worth theory of attempting to arrive at any increase in net worth of the defendant for the years involved. Mr. Campbell said that this might be obviated and the problem solved by the supplying by the defendants of a net worth statement and that Mr. Golden at that time stated that in order to give a net worth statement, that money would be needed for the purpose of hiring accountants; and then we might pick up what I mentioned to your Honor about the verification of Mr. Nickell, also of Mr. Douglas and also of Mr. Oliphant, concerning the release of funds to pay expenses of preparing a net worth statement.

Now Mr. Golden would testify that Mr. Fried-

man, at Mr. Golden's request, did make a survey of the Remmer records, either personally or by means of some other account employed by him, at 100 McAllister Street, the government office where the records were, and that Mr. Friedman gave an estimate, or attempted to determine the amount of time and the cost of a complete, comprehensive survey, in order to be able to try to prepare a net worth statement. There was a formal conference, Mr. Golden will testify, in the month of October, 1950, at 100 McAllister Street. Present were the same people, each time, including in that conference Mr. Shelton in addition to the people named before; namely, Mr. Campbell, Mr. Weaver, Mr. Brady and Mr. Shelton was there. Mr. Golden will testify that at that conference Mr. Golden pointed out to Mr. Campbell that in his opinion Mr. Remmer was being put at a great disadvantage, that no money was released from his assets in order to enable him to prepare a defense against any contemplated action, or defense against any civil claim, and also the defense could not find out what the case was about, what points the government contended were to be frowned upon, and no progress had been made and the records were unavailable, in fact, that they were all in the government's office and the accounts were only able to go up to the government office and work at certain hours on those records. Mr. Golden would testify that Mr. Campbell said, "If you can get a net worth statement, I will try and help you on the matter of release of some funds," and Mr. Golden said, "It

is developing into a vicious circle and I don't know how we can get a net worth statement without having money to employ people who can prepare a net worth statement," and explained to Mr. Campbell we were not accountants and were babes in the woods so far as preparing a net worth statement and the matter of a net worth statement was one for an accountant and no statement could possibly be obtained without money. Mr. Golden would also testify that he then asked Mr. Campbell if Mr. Campbell would agree to postpone any further action in the matter until the end of the year and Mr. Golden would determine what possibly could be done in the way of raising funds for the purpose of trying to supply the government with a net worth statement, in the hope of satisfying the government there was no fraud in the case. Mr. Campbell agreed to postpone further action or hold in abeyance until the end of the year. This was the hearing in October.

Now subsequent to that time Mr. Friedman made an estimate that satisfied him that it would require a substantial amount of money and because of the lack of funds, Mr. Friedman withdrew and notified the government that he was withdrawing as an accountant in the case. Mr. Golden will testify that on December 11, 1950, Mr. Campbell phoned him and told him that now the government had decided to include the year 1944, although previously Mr. Golden had been assured the year 1944, was not involved, and Mr. Campbell pointed out that since the statute would run in March of 1951—Mr.

Campbell was under the impression, and so stated, that the statute would run on March 15, 1951. However—I know what is bothering Mr. Shelton—it was later learned that the statute would not run out until April 13, 1951, the reason being it developed that in the year 1944, a 30-day extension had been granted by the government. Instead of demanding Mr. Remmer be required to pay the tax on March 15th, we were granted an extension until April 15th and the tax was paid April 13th, which extended their period for that number of days. However, Mr. Campbell was initially under the impression the statute would run on the year 1944, on March 15, 1951. Mr. Campbell referred in that telephone conversation with Mr. Golden to the possibility of obtaining a net worth statement and Mr. Golden told Mr. Campbell, and will so testify, that at that time he advised Mr. Campbell that the defendant was in much the same position he had originally been in—it was a matter of attempting to obtain funds for the purpose of hiring accountants to make the net worth appraisal.

In January of 1951—I might state to your Honor this is the original correspondence here, so far as government letters are concerned, carbon copies so far as our correspondence with the government is concerned—Mr. Campbell advised Mr. Golden in person—Mr. Golden had gone to Mr. Campbell's office—that the case was being sent to Washington with a recommendation for consideration and determination of some disposition. This statement on the



part of Mr. Campbell to Mr. Golden was confirmed by a letter.

On February 8th, and for several days thereafter, Mr. Golden will testify that Mr. Gillen, his associate, was in the East on another matter and during his visit there went and obtained an interview with representatives of the Department of Justice and of the Treasury Department, and the purpose of this interview was primarily to request that the year 1944, be omitted, upon the grounds that initially the defendant and defense counsel had been advised that the year 1944, was not involved and that any plans or attempts to prepare a defense had omitted the year 1944, and also the further ground that if the year 1944, were omitted, that would afford the defendant further time to supply a net worth statement, because then the first year in question would be the year 1945, and the statute would not run on the year 1945, until 1952, so that there would be ample time for the defendant to make efforts to accumulate some means of preparing for his defense and furnish the government with a net worth statement, and also at that time Mr. Gillen requested a conference at a future date; that the office of Gillen and Golden wrote for conferences upon the return of Mr. Gillen to both departments, requesting the Justice Department to afford us a conference on the merits of the case itself and requesting the Treasury Department to afford us a conference on the matter of releasing some funds from the assets that were tied up in Nevada, in order to enable the defendant to prepare his case.

Both departments agreed to grant conferences and set dates. The initial date, if I recollect, was March 16th, it having been learned in the interim that the statute for the year 1944, would not expire until April 13th, because of the 30-day extension that had been granted in allowing payment of tax.

Now at this point and approximately at this time the lawyer, Spurgeon Avakian, through personal friendship with Mr. Gillen and with Mr. Golden, was prevailed upon to enter the case as technical tax lawyer, although no fee arrangement could be made with him at that time. In other words, Mr. Golden will testify that the predicament of the defendant from a financial standpoint was made clear to Mr. Avakian and he was prevailed upon, through personal friendship with Mr. Golden and myself, to enter the case, and that he was prevailed upon also to go with Mr. Gillen to Washington to attend the two conferences that were heretofore mentioned.

Mr. Golden will testify, and would offer in support thereof correspondence, to the effect that the two conferences were postponed from March 16th to March 21st and that Mr. Gillen and Mr. Avakian made plane reservations with the United Air Lines to fly to Washington, D. C., in time for the conferences on March 21st and also made reservations at the Mayflower Hotel in Washington, D. C., for accommodations during their stay there, and that on March 14th, 1951, at five o'clock on the night of that day, there was filed in Washington and received in San Francisco at 5:41 p.m., the following

telegram: (Reads.) And thereafter the conference with the Treasury Department, concerning the release of funds, was likewise cancelled.

Now the testimony of Mr. Golden will further show that at about that time Mr. Golden was serving in the United States Army for the period of time required for commissioned reserve officers to serve, and that on March 28th there was arranged to have a meeting with Mr. Campbell, and Mr. Golden was in uniform at the time, appeared at the meeting—had gotten leave from the army—which was between Mr. Campbell, Mr. Gillen, Mr. Golden and Mr. Avakian—that was on March 28th—that we at that time informed Mr. Campbell that the scheduled conference at Washington had been arbitrarily and suddenly cancelled and that we were still in the same predicament that we were, that no conference had been held, and asking him what his information was and what he contemplated would happen and what possibility there was for us getting funds for the defendant, in order to prepare a net worth statement, and Mr. Campbell at that time said if we gave him a present net worth statement that he would recommend that some funds be released, but that it was not up to him whether or not funds would be released. The attorneys for the defense present pointed out again we were faced with a vicious circle, that we were unable without financial assistance to engage the services of people who could prepare a net worth statement and that, therefore, we did not know just exactly what could be done.

The Court: We will take a recess at this time before you go into another subject and I am going to make an order now that the defendant be, and appear in this court room for resumption of this trial at one o'clock, and that the defendant be and appear at all future sessions of this court in the case of the United States of America vs. Elmer F. Remmer, No. 12,177, as such sessions shall occur, and that he will remain under the jurisdiction of this Court and not depart from the jurisdiction of this Court from the present time until the conclusion of this trial, or until the further order of this Court.

I think that would obviate the necessity of making the order at each succeeding session.

Mr. Gillen: I believe so, your Honor.

The Court: Remember the order that he is not to leave the jurisdiction of this court, and, of course, the purpose of this is the things that we have heard in the last few days, and that is the only reason I am making these orders.

Mr. Gillen: I understand. I think that covers the situation.

(Recess taken at 11:45 a.m.)

Monday, February 11, 1952—Afternoon Session  
1:00 P.M.

(Defendant present.)

The Court: I want to get the benefit of counsel's views on some matters which are running through my mind in regard to this subpoena situation. Now it is a situation that is a novel one with me, to say

the least. I have never encountered one similar to it and I don't propose willingly, or by failure to take any action which I might be authorized to take, to permit this trial to be interrupted by taking of the defendant out of the jurisdiction of this court and placing him in San Francisco in response to that subpoena. Now we may strike some difficulties or encounter them, and I want you to know that I am going to take any action that appears to me to be available to prevent that thing and I hope I can find some way of doing it without an inconvenience to the defendant, but if my only resort is some action that is an inconvenience to the defendant, if that is the only thing I can do, I am going to do it.

Mr. Gillen: As I see the whole picture, it is jurisdictional that the defendant be present at his own trial. That case started before this other case commenced and is still in progress and the defendant should remain here at all times in this matter at all sessions in this case, until ultimately acquitted by the verdict or discharge of the jury for any other reasons. Now it strikes me the position of the court in the Northern Division of California simply is that the man is on trial and unavailable as a witness at this time. However, as a matter of courtesy, the Court should be formally advised of it and we have a telegram prepared, which we determined is a little early to send until we observe the outcome of this matter. It would seem to me—of course, this trial is just starting and it will be some days before they conclude the prosecution's case—I do

feel that perhaps if your Honor employed the informal means of communicating yourself with Judge Lemmon, that would materially assist the entire matter. We would supplement that with a telegram so that it would be on record, but the defendant is jurisdictionally required to be here and under the circumstances, of course, it would seem to me if his testimony was absolutely imperative to the prosecution's case down there, that they could even resort to a deposition up here or they could interrupt the trial down there for a day or two until he was available. Now I do not think any should disturb the procedure of the trial in this court. I agree with your Honor that it shouldn't. Now the defendant is here, attending every session of this trial of his own case and I believe there would be no difficulty encountered, particularly if your Honor was to communicate with Judge Lemmon. It might be that Mr. Thompson would call Mr. Tramutolo's office.

The Court: I believe I will call and if I do not have an assurance tonight that a demand will not be made to enforce the presence of this defendant there, I am going to take some action of my own.

Mr. Gillen: I do not know what action your Honor contemplates.

The Court: It may be a little bit drastic for the defendant, but I am going to take it because I am not going to sit idly by and allow this person interfered with by the United States attorney for the Northern District of California or by any member of the Court down there.

Mr. Gillen: Well, here is the situation. There is no question in your Honor's mind that the defendant will appear at all callings of the case. The defendant has a large bail posted here.

The Court: What would happen in the event he did not appear Friday and was cited for contempt?

Mr. Gillen: He would have to fix that down there.

The Court: I may require a new bond to the effect that he remain at all times in the jurisdiction of this court.

Mr. Gillen: He is subject to that on his own bond. If he violates it, he would forfeit his bond.

The Court: That is what I had in mind when I said it might inconvenience the defendant. I will require a new bond and have to have inserted to the effect that he shall not leave the jurisdiction of this court during the progress of this trial. I do not know what is going to happen, but I do not want to catch counsel by surprise. I want them to know what I am thinking about.

Mr. Gillen: Of course, your Honor, the defendant can not help being subpoenaed by another court. Suppose a man was lying in bed with a body cast, then what could they do about it. They would have to come up and take his deposition.

The Court: I am somewhat surprised they would have a subpoena served under the conditions. They know this trial is in progress. I am a little surprised the Department of Justice in California would reach out and take the defendant out of this court when he was on trial.



Mr. Gillen: I hope your Honor will not act hastily to the detriment and inconvenience of the defendant in this case.

The Court: The defendant is absolutely innocent of being involved in this situation, he can not help that, but I am going to take any step that occurs to me necessary to prevent an interruption of this trial and I want to tell you I have in mind, if it becomes necessary, to require a new bond with the expressed condition in it that this defendant does not leave this jurisdiction, unless I am assured that the authorities there, the United States attorney's office and the judge of the court there, do not intend to insist on his presence there Friday.

Mr. Gillen: Of course, I don't know where a new bond would make any difference. The only thing I can see in this instance, if they wanted to arbitrarily in California fine him for contempt. I know Judge Lemmon and have tried many cases before him. I do not anticipate Judge Lemmon, if acquainted with the circumstances, would be arbitrary at this time. I do not anticipate any trouble from Judge Lemmon.

The Court: I do not think the judge will be arbitrary but I don't appreciate the fact that the attorney representing the government would subpoena Mr. Remmer under these circumstances for a time that his trial is in progress and I know they must have known that.

Mr. Thompson: If the Court please, I would like to suggest that neither Mr. Tramutolo or the assistant handling the case or myself could have said



actually on what date Mr. Remmer would be available and the service of the subpoena does not indicate any indication on their part to interfere with the trial of this case. As a matter of fact they did not telephone me—I don't know whether they telephoned anybody else connected with the government's staff, but if they had, I would not have been able to tell them whether or not Mr. Remmer would be available Friday, next Monday, next Tuesday or any particular time. I do not think any criticism should be directed toward them. They merely served the subpoena, which must be responded to as required, but if it is not responded to, it will be for good legal cause.

Mr. Gillen: I think so, your Honor and, of course, I think your Honor knows we wanted this subpoena served on Mr. Remmer as much as we wanted the measles.

The Court: I know that. I think it might wait until tomorrow. I really don't know what to do, but that is one of the things I might have to do. I am going to take any means possible to prevent the defendant from being absent from this trial.

Mr. Gillen: I can assure your Honor he will not be absent from this trial.

The Court: Very well.

Mr. Gillen: May it please the Court, I can very rapidly conclude this offer of proof. The witness, Golden, would testify that following the conference in Mr. Pike's office in Nevada and following the return of the indictment against this defendant on April 9, 1951, to surrender the defendant on April

10, 1951, that in the month of September of 1951, Mr. Semenza, the certified public accountant of Reno, Nevada, was prevailed upon, without the defendant or the defense counsel being able to make any financial or fee arrangement with him, was prevailed upon to undertake the accounting task in the case and he requested that he have certain records and that attorneys Avakian and Golden communicated with Mr. Campbell, requesting that those records be turned over to Mr. Semenza. That these records that Mr. Semenza found necessary to have were records concerning various enterprises in which Mr. Remmer had an interest, which have been mentioned here and, also, of course, of the various enterprises and those books and accounts and records were then and at that time in the hands of the government departments, and in response to the request that those records be turned over to Mr. Semenza, so he could do the accounting task necessary to the defense of this case, Mr. Campbell refused, but said that if two conditions were met he would consider making the records available, the conditions being (1) that the defense make a proper showing of Mr. Remmer's interest in the records and books of account, and (2) that the defense should furnish him with written consent of the third parties from whom certain of the records were obtained; and third, he declined to give the names of those third parties from whom certain of the records were obtained.

That, I believe, your Honor, would conclude the offer of proof of testimony that would be given by

the witness, John Golden, who is on the witness stand.

1:15 P.M.

Afternoon Session—February 11, 1952

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

Mr. Gillen: May it please the Court, in view of your Honor's ruling on the offer of proof, the defense has no further questions of Mr. Golden.

Mr. Thompson: We have no cross-examination.

The Court: You may be excused.

Mr. Avakian: Your Honor, the defendant will call as its next witness Mr. Lawrence J. [2707] Semenza.

**LAWRENCE J. SEMENZA**

a witness on behalf of the defendant, having been previously sworn, testified as follows:

**Direct Examination**

By Mr. Avakian:

Mr. Avakian: Your Honor, later on in Mr. Semenza's testimony the defense proposes to offer in evidence a rather lengthy statement of 21 pages and I thought perhaps, since the prosecution will undoubtedly want to have some of their accountants examine that, also before your Honor rules on the offer, it might save time if I could hand a copy not only to government counsel but perhaps the agents to whom they might want to refer to the matter so

(Testimony of Lawrence J. Semenza.)

they could examine it. I will have that marked and hand a copy to them.

Q. Mr. Semenza, have you prepared a certain set of documents setting forth accounting analysis of the evidence in this case? A. I have.

Q. Would you hand me that, please?

Mr. Avakian: Your Honor, I will ask that the document handed me by the witness, consisting of 21 pages, bound together with a gray manila folder and entitled, "Elmer F. and Helen Remmer Accounting Statements Prepared by Lawrence J. Semenza," be marked at this time for identification as the defendant's next exhibit.

The Clerk: M-1.

Mr. Avakian: And may the record show at this time I hand a copy of Defendant's Exhibit M-1 for identification to [2708] counsel for the prosecution.

Q. Would you state your full name and address?

A. Lawrence J. Semenza, 111 Greenwich Drive, Reno.

Q. What is your business or occupation?

A. Certified public accountant.

Q. Where is your place located?

A. 29 E. 1st Street.

Q. Does your business have a firm name?

A. Semenza & Kottenger.

Q. Mr. Semenza, would you state briefly your education in college in connection with accounting matters, that is, your formal school education?

A. I am a graduate of the University of Nevada,

(Testimony of Lawrence J. Semenza.)

received an AB degree in economics in 1925; received an MA degree from the University of California in 1927, in economics. I completed a correspondence course with the Waldon School of Commerce in Chicago in accounting.

Q. Have you done any teaching in any school in the field of accounting?

A. I taught one year in the University of Nevada, from August, 1927, to May of 1928. Taught economics and business administration.

Q. Can you tell us when you first commenced in the practice of accounting?

A. In the year 1928, I became a Deputy State Bank Examiner [2709] and Auditor for the State of Nevada.

Q. And how long did you hold that position?

A. I held that position until February of 1931.

Q. And what did you do at that time?

A. At that time I was employed by George K. Edler, certified public accountant, practicing in the City of Reno.

Q. How long did you continue in that employment, Mr. Semenza?

A. I continued in his employ until 1936, when he took me in partners with him.

Q. And from the time you became a partner with him in 1936, from then on, did you continue for a time in partnership with him?

A. I continued for approximately two years. At that time I purchased his interest and practice in my own name until 1942.

(Testimony of Lawrence J. Semenza.)

Q. And what happened in 1942?

A. In 1942, I formed a partnership with William B. Kottenger under the name of Semenza & Kottenger and am still associated.

Q. You are still continuing in that partnership with him? A. I am.

Q. Mr. Semenza, during the period of your practice as an accountant, was your practice interrupted for any period of time by military service?

A. Yes, in 1942, I went with the United States Navy.

Q. How long were you in the United States Navy?

A. Until December 6th, I believe it was, of 1945. [2710]

Q. And during that period of time what type of work were you doing for the United States Navy?

A. I was in cost inspection service and ship-yards.

Q. Where was that?

A. San Francisco, Alameda and Oakland.

Q. Can you state briefly the nature of your duties in connection with the cost service of the United States Navy?

A. Mostly consisted of determination of amounts due contractors on their cost-plus contract basis and additional amounts due under fixed price contracts to escalator owners on labor and materials.

Q. So during that period you were engaged for the navy in accounting work, is that correct?

A. I was.

(Testimony of Lawrence J. Semenza.)

Q. Did you have any supervisory position in that connection?

A. Yes, I was cost inspector of United Engineering Company in Alameda and San Francisco and the Amship Corporation in Alameda. For a time prior to that I was in charge of the staff of accounting, auditing a number of small industrial plants.

Q. Can you state approximately how many accountants were under your supervision in the staff at the Navy at that time?

A. At times there were forty or fifty.

Q. In your practice with Mr. Kottenger under the name of Semenza & Kottenger, do you have other accountants employed in your office? [2711]

A. We have.

Q. Can you state approximately how many other accountants are in your office?

A. We have approximately twelve.

Q. Is that in addition to Mr. Kottenger and yourself? A. Yes.

Q. In other words, there are a total of 14 accountants in your office? A. That is correct.

Q. Can you tell us the geographical area in which you engage in your accounting practice?

A. Well, the entire State of Nevada, northern California, and some work in San Francisco.

Q. And during the past few years have you had active accounts, clients, in California as well as Nevada? A. We have.

Q. Would you state generally, Mr. Semenza, the

(Testimony of Lawrence J. Semenza.)

types of businesses of the clients for which your office has been doing accounting work during the past few years?

A. Well, mining companies, industrial plants, mercantile business, ranching, manufacturing, municipal accounts, insurance clients and then miscellaneous individual accounts.

Q. Is your office the largest accounting office in the State of Nevada?

A. So far as I know it is. [2712]

Q. Do you hold any official positions with the State government of Nevada?

A. I am a member of the Nevada State Bar of Accountants.

Q. Are you also president of the Nevada State Bar of Accountants?

A. I am at present, yes.

Q. How long have you been a member of the Nevada State Bar of Accountants?

A. Ten or 12 years.

Q. How long have you been president of the State Bar?

A. The last two terms.

Q. How many years would that be?

A. That would be about eight years.

Q. And are you a member of any professional accounting societies?

A. I am.

Q. Would you state the societies?

A. A member of the Nevada State Association of Certified Public Accountants, the California State Society of Certified Public Accountants, the American Institute of Accountants.



(Testimony of Lawrence J. Semenza.)

Q. Do you hold a certification as a certified public accountant from any States?

A. State of Nevada and State of California.

Q. And are you admitted to practice before the Treasury Department of the United States? [2713]

A. I am.

Q. Can you tell us approximately how long you have been admitted to practice before the Treasury Department?

A. Since 1934.

Q. From 1934 to the present have you actively represented clients before the Treasury Department?

A. I have, except for the period I was in the Navy.

Q. With that exception you have been continuous?

A. Yes.

Q. Now, Mr. Semenza, are you acquainted with the defendant in this case, Elmer F. Remmer?

A. I am.

Q. Can you tell us approximately how long you have been acquainted with him?

A. Approximately 20 years.

Q. Have you, in your professional capacity as a certified public accountant, ever done any accounting work for him?

A. Not directly.

Q. Have you done any work as an accountant for any corporation in which he has been a stockholder?

A. Yes.

Q. Will you state which one?

A. Cal-Neva, Inc.

Q. That is a corporation which was at one time

(Testimony of Lawrence J. Semenza.)

owner and operator of a resort known as Cal-Neva Lodge at Lake Tahoe? [2714]      A. It is.

Q. Approximately during what period of time were you the accountant for that corporation?

A. Approximately from 1931 on.

Q. Until when?      A. The time it was sold.

Q. And that would be to 1948 or 1949?

A. That is correct.

Q. And during that time was Mr. Remmer the active manager of that business?      A. He was.

Q. Now, subsequent to the sale of Cal-Neva in 1948 or 1949, have you done any work as an accountant in connection with the personal income tax matters of Mr. Remmer?      A. I have.

Q. Will you state when you first commenced doing that type of work?

A. In the summer of 1949 I was engaged by the firm of Thatcher, Woodburn and Forman to assist them in the preparation of petition to the Tax Court, covering certain proposed assessments of income tax against Mr. and Mrs. Remmer.

Q. And can you state the tax years that were involved in that case?

Mr. Thompson: Objected to as immaterial.

The Court: Objection sustained. [2715]

Q. Were the tax years involved in that case, did they include the years 1944, 1945 and 1946?

A. They did.

Q. And you said that you were engaged for the purpose of assisting the firm of Thatcher, Woodburn and Forman in preparing a petition to be filed

(Testimony of Lawrence J. Semenza.)

with the Tax Court, and is that case in the Tax Court still pending?

Mr. Thompson: Objected on the ground it is irrelevant and immaterial.

The Court: Objection sustained.

Q. Well, since 1949 have you still been engaged in accounting aspects of that Tax Court matter?

Mr. Thompson: Same objection.

The Court: Same ruling.

Mr. Avakian: Well, your Honor, if I understand the basis of the ruling——

The Court: It is immaterial.

Mr. Avakian: Well, I think it is material.

The Court: Well, you and I disagree.

Mr. Avakian: Well, I can't explain my views to you?

The Court: No, no.

Mr. Avakian: Very well.

Q. Now, have you at any time engaged in any accounting work in connection with criminal tax charges which have been brought against Mr. Remmer with respect to the years 1944, 1945 and [2716] 1946? A. I have.

Q. And will you state when you became engaged in that work? When did you commence that phase of the work?

A. It was in the month of October, 1951.

Q. Will you state who engaged your services at that time? A. Mr. John Golden.

Q. And for the purpose of indention, that

(Testimony of Lawrence J. Semenza.)

is the Mr. Golden who sits at the defense counsel table in this case?      A. It is.

Q. Now, prior to the time that you were engaged by Mr. Golden to work on the criminal aspect of the case, did you at any time have any conferences with a special agent of the Bureau of Internal Revenue by the name of Ray Weaver?

Mr. Thompson: Objected to as immaterial.

The Court: Read the question.

(Question read.)

The Court: Answer the question yes or no.

A. Yes.

Q. Will you state approximately when you had the first such conference?

A. Oh, I would think it would be in say 1948.

Q. And calling your attention specifically to the date of July 11, 1949, did you have a conference with Mr. Weaver on that date? [2717]

A. Yes, I did.

Q. Where was that conference held?

A. In his office in San Francisco.

Q. And that is located at 100 McAllister Street?

A. Yes.

Q. I call your attention, Mr. Semenza, to prosecution's Exhibit No. 70, which you have previously identified in this case, as a list of records which were turned over to you by Mr. Weaver on July 11, 1949, and I will ask you to look at that and tell me whether the conference which you have just mentioned on July 11, 1949, was connected with the

(Testimony of Lawrence J. Semenza.)

giving to Mr. Weaver by you of the receipt which you hold in your hand?      A. It was.

Q. And did you at that time obtain from Mr. Weaver's possession various books and records that are mentioned in Exhibit 70?      A. I did.

Q. Now, that was on July 11, 1949, and was your obtaining of those books in connection with the matter pending in the Tax Court at that time?

A. It was.

Q. And did you state to Mr. Weaver the purpose for which you desired to examine those books?

A. Well, probably, generally.

Q. And would you state, to the best of your recollection, [2718] what you stated to him?

A. Well, Mr. Weaver informed me that there were other records available besides those listed here and I told him at the time that I would be unable to take all of them, that I could only make a general examination of the records, we only had a limited time in which to prepare this petition; consequently I did not want all of the records at that time.

Q. Did you see generally other records in Mr. Weaver's possession at that time relating to the various enterprises in which Mr. Remmer had interests?

A. There were other records there in the room, a number of boxes.

Q. Will you state approximately how many boxes of those records there were, aside from the documents which you took away with you?

(Testimony of Lawrence J. Semenza.)

Mr. Thompson: Objected to as irrelevant and immaterial, has nothing to do with the issues before the Court.

Mr. Avakian: May I be heard before your Honor rules on that question, unless your Honor is satisfied——

The Court: You may answer the question.

A. There were a number of boxes there, five or six boxes, I would say, at least.

Q. And did Mr. Weaver make any statement to you as to whether or not the additional records in those other five or six boxes would be available to you for future examination if you [2719] desired?

A. Yes, he indicated I would be able to have access to them.

Q. Now, did you, immediately following that conference with Mr. Weaver, take the records mentioned on Exhibit 70 to Reno?

A. Yes, I took them in my own car and returned with them.

Q. And did you immediately thereafter make any examination of those records? A. We did.

Q. When you say "we," state whom you mean?

A. My office staff and myself.

Q. Were you working in conjunction with any one else at that time?

A. At that time I was working with Mr. Thatcher.

Q. And that was in connection with this civil Tax Court case that you mentioned? A. It was.

(Testimony of Lawrence J. Semenza.)

Q. Would you state the accounting purpose of the examination you made at that time?

Mr. Thompson: Objected to as immaterial.

The Court: Objection sustained.

Mr. Avakian: Could I be heard on that, your Honor?

The Court: No.

Q. Could you state approximately how long it was after July 11, 1949, that you completed the examination which you were making at that time of the records and books mentioned on [2720] Exhibit 70?

Mr. Thompson: I make the same objection.

The Court: I can't see where it is material.

Mr. Avakian: The materiality is this—I want to show by this witness, first of all that there are many books and records never produced in court by the prosecution, and secondly, the examination made at that time of the records which were turned over to him was for a limited purpose, which was in effect for a short time only and was not connected with the criminal charges in this trial, as bearing, your Honor, on the question of (1) the adequacy of the records maintained, and (2) the opportunity given to the representatives of the defendant to examine the records of these enterprises which had been turned over to the government. All those issues, I think, have been injected into this trial.

The Court: Objection sustained.

Q. Did you at some subsequent time turn the

(Testimony of Lawrence J. Semenza.)

documents and books mentioned on Exhibit 70 over to another accountant?

Mr. Thompson: Objected to as already asked and answered. We are going over ground that was covered early in December with this witness.

The Court: He has already testified to these matters.

Mr. Avakian: Well, I don't recall just what testimony Mr. Thompson has in mind.

The Court: You may answer this [2721] question.

A. Yes, I turned them over to another accountant.

Q. Can you state who that accountant was?

A. Nathan Jay Friedman of San Francisco.

Q. Was Mr. Friedman likewise working on the matter in conjunction with Mr. Golden?

A. He was.

Q. And the records were turned over to him because they related to San Francisco enterprises?

A. That is true.

Q. Now, you said that approximately in October, of 1951, you were engaged by Mr. Golden to work on the accounting aspects of the criminal charges which had been brought against Mr. Remmer for the years 1944, 1945 and 1946. Did you at that time make any further examination of the books and records which are mentioned on Exhibit 70?

Mr. Thompson: I make the same objection, it is immaterial.

The Court: Objection sustained.



(Testimony of Lawrence J. Semenza.)

Mr. Avakian: Could I have the opportunity of explaining to your Honor the materiality of this?

The Court: Let us proceed.

Mr. Avakian: I have this in mind; in direct examination counsel were permitted to state the exhaustive——

The Court: The ruling will stand.

Q. Now, Mr. Semenza, are the books and documents which are [2722] mentioned in Exhibit 70 all in evidence here in this case? A. They are.

Q. Are there books and records of the various enterprises, in which Mr. Remmer had an interest and which have been mentioned in this trial here, are there books and records of those enterprises which Mr. Weaver had in his possession in July of 1949, which have not been presented in evidence here?

Mr. Thompson: I make the same objection, immaterial, calls for the witness' conclusion.

The Court: Well, the objection will be overruled.

A. There are.

Q. And have you ever, Mr. Semenza, examined those books and records which were in Mr. Weaver's possession then and which you state are not in evidence here? A. I did not.

Q. Now, did you, Mr. Semenza, request that arrangements be made for you to examine those other books and records in doing your accounting work in preparation for this trial?

Mr. Thompson: Objected to on the ground it calls for hearsay. He says did he request. Our at-

(Testimony of Lawrence J. Semenza.)

tention is not directed to any particular conversation, who was present.

The Court: You may answer the question yes or no. A. I did.

Q. Were you ever shown any of those other books and records? A. I was not. [2723]

Q. Now, Mr. Semenza, would you state whether, from an accounting point of view, it is customary to examine all books, records and other documents of an accounting nature, in making an income tax analysis of the income of a particular business?

Mr. Thompson: Objected to, if the Court please, upon the ground it is incompetent, it is immaterial what is customary. So far as accounting procedure, if this witness is to testify to any matters germane to this case, his answer will be based upon the books and evidence before the Court.

The Court: Objection sustained.

Mr. Avakian: Your Honor, that is an important point I understod your Honor said we could go into as part of the defense. You recall the prosecution witness said the books and records were inadequate. We would like to show the adequacy can not be determined unless they were all looked into.

The Court: We have evidence this witness has never seen these records.

Mr. Avakian: As I say, under proper accounting you do not determine whether the books are adequate until you look at all, you have to look at all of them.

The Court: I still think it would be immaterial.

(Testimony of Lawrence J. Semenza.)

An answer from this witness would not indicate the very thing you are asking about had not been done.

Mr. Avakian: No, your Honor, it would be in direct refutation of testimony of the prosecution witness that the records [2724] are inadequate.

The Court: The ruling will stand.

Q. Now, Mr. Semenza, on approximately December 7th or 8th, 1951, either one, the books and records which are mentioned on Exhibit 70, which you hold in your hand, were deposited with the clerk of this court by the defense, pursuant to the order of the Court. Had you at that time completed your examination of those books and records?

A. I had not.

Q. And have you subsequently made further examination of those books and records while they have been in custody of the clerk here in court?

A. I have.

Q. And have you heard or read the transcript of all of the testimony given by the witnesses in this case?

A. I have.

Q. You have been present during most of the trial personally?

A. I have.

Q. And as to the days you were not present, you have read the transcript?

A. Yes.

Q. And have you personally examined all of the documentary evidence which has been introduced in this case?

A. I have.

Q. And have you made an examination of all of the testimony [2725] and all of the documentary evidence in this case for the purpose of making an ac-

(Testimony of Lawrence J. Semenza.)

counting analysis of the net income of Elmer and Helen Remmer for the years 1944, 1945, and 1946?

A. I have.

Q. And have you prepared a written report, setting forth the analysis which you have made?

A. I have prepared statements.

Q. And those are contained in the 21-page document which has been identified as defendant's Exhibit M-1?

A. They are.

Q. And in preparing those accounting statements, have you given consideration to all of the testimony and all of the documentary evidence in this case?

A. I have.

Q. And have you limited yourself to the testimony and the evidence which has been introduced in this case?

A. I have.

Q. And does defendant's Exhibit M-1 represent, to the best of your knowledge and ability the accounting analysis of the testimony and documentary evidence in this case with respect to the subject matters that are in the statement?

A. Yes.

Mr. Avakian: Your Honor, at this time we would like to offer defendant's Exhibit M-1 for identification in evidence.

Mr. Thompson: Your Honor, I request an opportunity to [2726] read it. It may take some time.

The Court: Yes. Have we reached a stage where it will require some time for the examination of that document?

Mr. Avakian: I was going to suggest this. Perhaps we can defer your Honor's ruling on this mat-

(Testimony of Lawrence J. Semenza.)

ter and I can examine as to other matters until the customary recess time and then counsel can examine the document during recess. Will that be satisfactory?

Mr. Thompson: Satisfactory with me.

The Court: Very well.

Q. In your practice as a certified public accountant during the past 20 years or so, have you done accounting work for partnerships, Mr. Semenza?

A. I have.

Q. And I take it also for individuals and corporations? A. That is true.

Q. And can you give us an idea as to whether or not your experience with partnership accounting has been limited or extensive?

A. It is extensive.

Q. Have you had partnership accounts continuously during the entire period of your practice?

A. A large number of them.

Q. And have you prepared a large number of partnership income [2727] tax returns?

A. I have.

Q. And are you familiar with the accounting practices and procedures relative to the preparation of partnership returns and relating to the preparation of financial statements for partnerships?

A. I am.

Q. Have you, Mr. Semenza, in your experience as an accountant, encountered the situation of a partnership in which one partner contributed the initial capital investment for the partnership under

(Testimony of Lawrence J. Semenza.)

an agreement, whereby the other partner or partners would build up their capital investment in the partnership by leaving a portion of their profits in the business?

Mr. Thompson: Objected to on the ground it is immaterial whether he encountered these problems in his business.

Mr. Avakian: It is preliminary, your Honor, to lay the foundation for a question. I just want to establish his familiarity with partnerships.

The Court: You may answer the question.

A. I have.

Q. Can you give us any idea as to whether your familiarity with that problem has been limited or extensive?

Mr. Thompson: Same objection.

The Court: Objection sustained.

Mr. Avakian: It asks for the scope of his experience. [2728]

Mr. Thompson: It calls for conclusion.

Mr. Avakian: I want to find out whether he has a limited experience or extensive.

The Court: Objection sustained.

Q. Mr. Semenza, in determining the portion of the profits of a partnership, which the individual partners should report in their individual income tax returns, is it proper and customary accounting procedure to base that on their share of the profits, or is that based on the amount of money that each particular partner withdraws from the business during the year?

(Testimony of Lawrence J. Semenza.)

A. It is based on the distributive share and not the amount of withdrawal by the partner.

Q. Will you state what you mean by the term "distributive share"?

A. Well, the profit of the partnership is determined and then the shares of each partner of that total profit is determined and that is the amount that each partner must report in their individual income tax return.

Q. Does the amount that is actually withdrawn during the year by each partner have any bearing on the amount upon which the partner has to pay income tax?      A. No.

Q. And will you state whether or not in the case of partnerships it frequently occurs that partners actually draw from [2729] the business amounts which are different from their share of the profits?

Mr. Thompson: Objected to as immaterial what happens in other partnerships.

The Court: Let me have the question?

(Question read.)

The Court: Objection sustained.

Mr. Avakian: The purpose of that question is to refute the contention of the government that because there were unequal drawings from the business they actually were not partnerships. We want to show that this is a customary happening, in the field of partnerships. There is nothing unusual about that, so the jury may have a proper setting

(Testimony of Lawrence J. Semenza.)

in which to determine what inference it should or should not draw.

The Court: Let me have the question again?

(Question read.)

The Court: You may answer.

A. Yes.

Q. Now, Mr. Semenza, from an accounting point of view, can you state how the partner's share of the profits and the partner's capital investment in a partnership business are customarily recorded on the books of the partners?

A. The end of an accounting period, if a partnership realizes a profit, the partnership part of the credit is credited to the partner's capital. [2730]

Q. What is done with respect to any drawings?

A. Any drawings during the year would be charged to the partner's capital account.

Q. And what does the balance of any particular account represent?

A. Net investment of the partner in the partnership.

Q. So if the partner fails to withdraw his profits, then the balance of his account, showing his investment in the partnership, is increased by that amount?

A. That is correct.

Q. And any amount that he withdraws then reduces the balance of his investment in the business?

A. That is true.

Q. And is the term "capital account" used to designate, in accounting terminology, the credits and



(Testimony of Lawrence J. Semenza.)

charges to the account of the particular partner in the business?

A. The net investment of the partner in the business.

Q. Now, Mr. Semenza, I am going to call your attention to prosecution's Exhibit 173, which is an exchange of correspondence between Mr. Weaver and yourself in October and November of 1949, and direct your attention particularly to the reference in that correspondence to a credit in the books of Cal-Neva, Inc., to the account of Elmer F. Remmer, in the amount of 50 thousand dollars in September of 1946, and also to a deposit of 50 thousand dollars in Cal-Neva Lodge account [2731] in the First National Bank of Nevada on September 28, 1946, and I am going to ask you whether, subsequent to the date of the correspondence in Exhibit 173, you made any further investigation with respect to that item of 50 thousand dollars? Answer that yes or no.

A. Yes.

Q. I call your attention to defense Exhibit A-1, which is a promissory note dated September 27, 1946, in amount of 50 thousand dollars, from Elmer F. Remmer to Robert L. Jeffress, and I will ask you whether or not you saw that document any time prior to its introduction in evidence in this trial?

A. I did.

Q. Would you state when it was that you first saw that document?

A. Some time in the year 1950.

Q. And can you tell us what part of the year it was?

(Testimony of Lawrence J. Semenza.)

A. It was in the first half of the year.

Q. And where was it that you saw that document?

A. It was delivered to me by Robert Jeffress in my office.

Q. In Reno? A. That's right.

Q. And by Robert Jeffress you refer to the late Robert Jeffress, whose widow was on the stand here last Friday? A. I do.

Q. Were you personally acquainted with him during his lifetime? [2732] A. I was.

Q. And prior to the time that he delivered that document to your office, had you had any conversation with Mr. Jeffress regarding the note? Will you answer that question yes or no? A. Yes.

Q. Now, when Mr. Jeffress brought that note to your office in the early part of 1950, did he leave it at your office at that time or did he take it away with him? A. He left it in my office.

Q. Approximately how long did that note remain in your possession?

A. Until about November of 1951.

Q. And did you turn it over to some one else at that time?

A. I turned it over to Mr. Golden at that time.

Q. And that is John R. Golden, the defense counsel? A. It is.

Q. And it was in your possession continuously during the interim? A. It was.

Q. At the time Mr. Jeffress delivered that note to you, did you have any conversation with him

(Testimony of Lawrence J. Semenza.)

with respect to the date of payment of the note, if any?      A. I did.

Q. And what was that conversation? [2733]

2:10 P.M.

(Notebook 343, PP. 25-29.)

**RE: SEMENZA'S CONVERSATION WITH  
MR. JEFFRESS**

Mr. Avakian: Your Honor, in connection with the objection that has been made and sustained, we would like to make an offer at this time of proof by this witness to the effect that the witness would testify at the time Robert L. Jeffress delivered possession of defendant's Exhibit A-1 to Mr. Semenza in the early part of 1950, Mr. Semenza asked Mr. Jeffress if the note had been repaid and if so when, and Mr. Jeffress stated to Mr. Semenza that the note had been repaid by Mr. Remmer during 1947 and 1948 and that Mr. Semenza told Mr. Jeffress that he was particularly interested in knowing whether any part of the note had been repaid prior to the end of 1946 and that Mr. Jeffress replied that the entire \$50,000 had been repaid after 1946.

Now, in connection with that offer, your Honor, I am sure your Honor is familiar with the lengthy discussions we have of declaration against interest and I, for that reason, will refrain from going into it further.

I would like to make only this one observation, that in respect to this particular transaction, the

(Testimony of Lawrence J. Semenza.)

only two parties to the transaction; namely the holder of the note, Mr. Jeffress, and Mr. Semenza, Mr. Jeffress being now dead, the only witness who could possibly testify as to what occurred or what was said during that conversation is Mr. Semenza, because he is the only remaining witness who knew about the conversation.

The Court: The offer will be rejected.

Mr. Thompson: We make the same objection, your Honor.

The Court: Yes.

Mr. Avakian: Mr. Gillen thought I should call your Honor's attention that the conversation in this instance was a part of the actual surrender of the document and it is not a conversation unrelated to a transaction, but actually was a part of the transaction; namely, the surrender of the note, the surrender of the note itself being some indication of the status of the matter. A conversation with relation it throws an additional light that cannot be present in connection with unrelated transactions.

The Court: The ruling will stand.

Mr. Thompson: Objected to as calling for hearsay, your Honor, incompetent.

The Court: Objection sustained.

Mr. Avakian: I think, your Honor, that raises the same question of declaration against interest.

The Court: The objection is sustained.

Mr. Avakian: I just wanted to say in connection with the next recess, we would like to make an offer of proof on that.

(Testimony of Lawrence J. Semenza.)

The Court: I see.

Mr. Avakian: If that is agreeable, we would like to do that, your Honor.

The Court: Yes, all right.

Mr. Avakian: Your Honor, we have reached the point in Mr. Semenza's examination where we would like to have the exhibit which he has prepared received in evidence because further examination will relate to that. May we suggest we take a recess, for the two purposes of making proof and so counsel may examine the exhibit.

The Court: Yes, we will excuse the jury.

(Jury and alternate jurors admonished and excused at 2:10 p.m.)

(In the absence of the jury.)

(NB 343, pp. 25-27.)

2:35 P.M.

(Defendant present with counsel.) [2734]

(Presence of the jury and alternate jurors stipulated.)

Mr. Thompson: At this time, your Honor, the defense has offered in evidence Exhibit M-1 for identification. We request permission to ask three or four questions on voir dire.

The Court: You may do so.

Q. (By Mr. Thompson): As I understand your testimony, Mr. Semenza, this Exhibit M-1, which contains a number of statements, constitutes your

(Testimony of Lawrence J. Semenza.)

own personal analysis of the records in evidence in this case, is that correct?      A. It does.

Q. And you recognize, do you not, that in many respects the evidence is conflicting and you were required to take one view of the evidence rather than a contrary view, in preparing the statements?

A. That is true.

Q. You also recognize, do you not, that in certain respects the items contained in some of the statements are based upon your own assumptions or conclusions, rather than actual direct evidence of the fact itself?

Mr. Avakian: It appears to me this is more properly cross-examination rather than voir dire.

Mr. Thompson: I think it is proper voir dire to show the foundation for the exhibit.

The Court: It seems to me it is calling for some matter on which the matter is based. [2735]

Mr. Avakian: I have no objection to counsel asking questions, but I did not want him to go into cross-examination before the exhibit was explained.

The Court: Let us have the question.

(Question read.)

A. My conclusions are based on evidence in this case.

The Court: I do not believe the witness understood the question. If he did, I did not.

Mr. Thompson: Permit to withdraw. I will reframe the question.

The Court: Yes.

(Testimony of Lawrence J. Semenza.)

Q. In preparing the statement contained in Exhibit M-1 for identification, it was necessary for you to draw inferences from certain evidence in the case in the situation where direct evidence of a particular fact is not in evidence?

A. If there was not sufficient evidence, I eliminated it from my statement.

Q. But that still was your personal opinion as to whether or not the evidence was sufficient?

A. Yes.

Q. And in the event your opinion in that connection should be wrong, or the jury should take a contrary opinion, your statements would be different as contained in this Exhibit M-1?

Mr. Avakian: I think that is clearly cross-examination [2736] rather than voir dire.

The Court: You will pardon me. I wonder if this isn't what you are trying to get at. On direct examination Mr. Semenza testified that this exhibit was based upon all the testimony in the case or the documentary evidence, as well as oral testimony. Now, isn't the purpose of this question to inquire whether or not it also contains matters of his opinion, isn't that the question?

Mr. Avakian: Your Honor, if I may restate the testimony, I believe Mr. Semenza testified that in preparing this exhibit he took into consideration all of the testimony in evidence and that this represents his accounting analysis of the evidence, based on his best ability and judgment. That, I believe, is the foundation that was laid in his testimony for it.

(Testimony of Lawrence J. Semenza.)

If what counsel is stating is that there are matters in evidence here from which more than one inference could be drawn, I will be willing to stipulate generally that there is evidence in the record from which more than one inference can be drawn.

Mr. Thompson: And in preparing his statement, he was required to choose between those inferences.

Mr. Avakian: I do not like the word "required." I believe he said he used his best judgment.

Mr. Thompson: I mean in order to reach the result he put down on the paper. [2737]

Mr. Avakian: He used his best judgment, yes.

Mr. Thompson: May I have the question read?  
(Question read.)

Mr. Avakian: Your Honor, I object, first on the ground it is not proper voir dire; rather it is cross-examination; secondly, it is an argumentative type of question; third, it is incomprehensive to me, because if the jury should take a different view, would Mr. Semenza's conclusion be different—I don't understand what he means by that. Mr. Semenza's conclusion might remain the same.

The Court: Will you reframe the question?

Mr. Thompson: I will withdraw the question, your Honor.

Q. Mr. Semenza, in instances where the evidence was in conflict, and in instances where more than one inference might be drawn from the evidence, in preparing this statement, it was necessary for you to adopt one opinion of your own, was it not?

A. Certainly.



(Testimony of Lawrence J. Semenza.)

Mr. Thompson: I have no objection to Exhibit M-1.

The Court: Exhibit M-1 may be admitted in evidence.

Mr. Avakian: Your Honor, the first three pages of Exhibit M-1 are in the nature of summaries, you might say, setting forth the results, and the remaining 18 pages show in considerable detail the supporting data. We have reproduced in enlarged form on placards the three summary pages, similar to [2738] the enlargement which the prosecution made of its Exhibit 183, and if there is no objection, we should like to have these enlargements likewise received in evidence, so they can be exhibited before the jury and permit the jury to follow more intelligently our questioning.

Mr. Thompson: No objection.

Mr. Avakian: I would request then that these be marked exhibit 1 with reference to page 1 in the exhibit to which they refer. This first one would be marked Exhibit M-1 page 1; the second would be marked Exhibit M-1 page 2; and the third would be marked Exhibit M-1, page 3.

The Court: They are all admitted in evidence.

Q. Mr. Semenza, in preparing defendant's Exhibit M-1, did you have any discussions with me with regard to the form and content of the exhibit?

A. Only general discussion.

Q. And do any of the contents of the exhibit represent items which you inserted on my instruction?

A. No, they do not.

(Testimony of Lawrence J. Semenza.)

Q. Do they in every instance represent your own independent judgment as an accountant?

A. They do.

Q. Would you turn to page one of defendant's Exhibit M-1 and state to us what that represents?

A. Page 1, Exhibit M-1 presents the income from these various [2739] sources as shown in the evidence in this case and from the records. It compares it with the income reported in the individual returns of Elmer and Helen Remmer.

Q. When you say from evidence and records, are you referring to the records which are in evidence here?

A. Yes, I mean the witness' testimony and the documentary evidence admitted here.

Q. And have you set forth in the column entitled 1944, the results of your analysis as to Elmer and Helen Remmer's share of the income of each of the enterprises listed on page 1 as shown by the evidence in this case?

A. I have.

Q. And will you tell us the total income of Elmer and Helen Remmer for the year 1944, as you have set forth in your exhibit?

A. \$11,253.07.

Q. And have you also set forth the income reported by Mr. and Mrs. Remmer in the return which they filed for that same year?

A. I have.

Q. And those are the returns which are in evidence here?

A. They are.

Q. And what is the amount of that?

(Testimony of Lawrence J. Semenza.)

A. Twenty thousand dollars.

Q. And have you made a similar statement and analysis with respect to the year 1945?

A. I have. [2740]

Q. And what is the amount of the income of Elmer and Helen Remmer for the year 1945 which you determined from your analysis of the testimony and exhibits? A. \$74,958.82.

Q. And what is the amount shown on the returns of Elmer and Helen Remmer for the year 1945 which are in evidence in this case? A. \$71,808.27.

Q. Have you made a similar computation for the year 1946? A. I have.

Q. Will you state the amount that you determined as the income of Elmer and Helen Remmer for the year 1946? A. \$38,215.76.

Q. And what is the amount shown on their returns for the year 1946 which are in evidence here?

A. \$37,254.31.

Q. Now, have you also set forth on that same page a column representing the total of these computations for the three years combined?

A. I have.

Q. And would you state the amount of income of Elmer and Helen Remmer for the three years combined which you determined from your analysis of the evidence? A. \$124,427.65.

Q. And what is the amount which they reported on the returns [2741] they filed which are in evidence in this case? A. \$129,062.55.

Q. Have you also set forth on page 1 the differ-

(Testimony of Lawrence J. Semenza.)

ence between the amount which you determined as the correct income and the amount which they reported as their income?      A. I have.

Q. Now, I note that in the exhibit in typewritten form on page 1, and elsewhere through the exhibit also, there are certain figures which are enclosed with a bracket mark. Can you explain what that parentheses mark signifies?

A. That means it is less than income shown in my statement.

Q. I was asking you generally what does enclosure of a figure in parentheses mark indicate in accounting business?

A. A reduction or loss.

Q. And in the enlargement which has been prepared for the assistance of the jury, those figures are set forth in red, is that correct?

A. They are.

Q. The other figures are in black?

A. That is correct.

Q. And what is the amount which you determined for 1944 as the difference between the amount reported by Mr. and Mrs. Remmer and the amount which you determined as correct income?

A. \$8746.93.

Q. And in what direction does that difference lie? [2742]

A. In excess of the income that I determined.

Q. They reported more, in other words?

A. That is correct.

(Testimony of Lawrence J. Semenza.)

Q. Will you give us the same explanation with respect to the year 1945?

A. The year 1945 the amount I determined was \$3,150.55 more than reported in the returns.

Q. Will you give us the same explanation with respect to the year 1946?

A. 1946 the amount I have shown as income is \$961.45 more than the returns.

Q. And will you tell us also the difference for the three years in amount?

A. The amount shown on the returns exceeded the amount I determined by \$4,634.93.

Q. Now, on sheet 2, Mr. Semenza, you have set forth in considerable detail a number of items. Would you state, Mr. Semenza, what page 2 of Exhibit M-1 represents?

A. Page 2 reflects a list of assets and liabilities which I have been able to determine from my examination of the evidence in this case.

Q. So that we may perhaps clarify this a bit—and if I may be permitted, your Honor, to state it in the form of a leading question—page 1 represents your analysis of the income on the basis of the income and expenses shown by the evidence in [2743] the case, is that correct? A. That is correct.

Q. Page 2 represents, to the extent that you have been able to determine, the assets and liabilities attempting to proceed on the net worth method, is that correct? A. That is correct.

Q. Were you able, Mr. Semenza, to make a computation of income on the net worth basis?

(Testimony of Lawrence J. Semenza.)

A. No, I was not.

Q. And would you state why?

A. Because the evidence in this case indicates that there was cash in safe deposit boxes and safe and the evidence does not indicate any amount.

Q. Would you state the meaning in an accounting sense of the term "net worth"?

A. Net worth is the difference between the assets and liabilities.

Q. Is it possible to determine the net worth of an individual if you are unable to determine the value of any of his assets?      A. No.

Q. Have you, however, set forth, to the extent that values could be determined, the various assets and liabilities shown by the evidence in this case?

A. I have.

Q. And I call your attention particularly to the individual [2744] items on the exhibit. Let us refer first to item No. 1, designated "Bank of America, Tracy Branch." Where did you obtain the information that is set forth in your exhibit as to the balance in that account?

A. From exhibits presented by the Bank of America in evidence here.

Q. And those figures represent the balance of that account at the end of each year, 1943 to 1946, inclusive?      A. That is correct.

Q. And secondly, with respect to Item 2, Bank of America, Grand Lake Branch, where did you obtain data for that?

(Testimony of Lawrence J. Semenza.)

A. From exhibits admitted in evidence in this case.

Q. And I notice there is no amount entered in 1943 and 1944, can you explain that?

A. I found no exhibits for those years.

Q. In other words, the account came into existence during the year 1945? A. Evidently.

Q. And then in respect to the next item of United States government bonds, where did you obtain those figures?

A. That is from exhibit presented by the government and admitted in evidence.

Q. Would you state the source of the information as to the loan to Mrs. Harris?

A. It is in the testimony. [2745]

Q. Is that based on testimony of Mrs. Harris and various bank records? A. That is right.

Q. And what is the basis of the entry with respect to Item 5, loan to Marys Chaney?

A. Her testimony.

Q. And Marys Chaney is the same person whose married name is Marys Chaney Martin?

A. That is correct.

Q. I note you have entered at the end of 1943 the amount of \$2500 and you have entered no amount for later years and were you aware of her testimony that during the year 1944 she borrowed \$2500, which was delivered to her in the form of a check of Cal-Neva Corporation?

Mr. Thompson: Objected to as leading the witness. He can state what he bases his figures on, but

(Testimony of Lawrence J. Semenza.)

I do not think counsel has to suggest it to him. It is leading.

Mr. Avakian: It is leading, your Honor.

The Court: See if you can reframe it.

Q. Will you state, Mr. Semenza, whether or not there is reflected in your exhibit anywhere the additional amount of \$2500 which was loaned to Marys Chaney in 1944 by means of a check drawn on Cal-Neva corporate bank account?

A. In the schedule analysis to Cal-Neva, Inc., account, which is Schedule 6 of my analysis here, is \$2500 included as a [2746] charge to Mr. Remmer for withdrawal from the business.

Q. In other words, you handled that in the same manner Mr. Weaver did; you entered it as a charge to Mr. Remmer's drawing account from Cal-Neva?

A. I did.

Q. That transaction, then, is reflected in what item of your exhibit?      A. Item 21.

Q. Which sets forth the amount that Mr. Remmer owed to Cal-Neva at the end of each year, is that correct?      A. That is correct.

Q. And upon what did you base the figures with respect to Item 6 which was due from Mr. Albert Villaudy?

A. From the records of Cal-Neva and the checks admitted in evidence here showing these payments.

Q. Now, with respect to Items 7, 8, 9, 10 and 11, which are designated at equity in the B. & R. Smoke Shoppe, Day-Night Cigar Store, 110 Eddy Street, Menlo Club and Transit Smoke Shop, respectively,



(Testimony of Lawrence J. Semenza.)

can you tell us generally in explanation of all five items the manner in which you determined the equity of Mr. and Mrs. Remmer in those businesses, as shown in your exhibit?

A. Well, in Schedule that is filed, I have prepared a schedule No. 1, which shows the assets and liabilities and net worth of the B. & R. Smoke Shoppe, which shows Mr. Remmer's interest [2747] in that business at the end of the various years in question. In Schedule No. 2 I have shown the Day-Night Cigar Store and the capital accounts of the various partners of that enterprise and the interest of Mr. Remmer. In Schedule 3 I show the net worth and partners' capital account in 110 Eddy Street enterprise and from it I have taken Mr. Remmer's interests in that enterprise at the end of the various years, as shown on this summary sheet, which is page 2 of Exhibit M-1. In Schedule No. 4 I have shown the assets, liabilities and net worth of the Menlo Club at the end of 1945 and the end of 1946 and the various partners' capital accounts and from it I have taken the equity of Mr. Remmer, as reflected in the schedule page 2 of the Exhibit M-1. In Schedule No. 5 I have set forth the assets, liabilities and net worth of the Transit Smoke Shoppe December 31, 1946, and the partners' capital accounts at the end of the year and from that schedule I have taken the amount shown on page 2 as the equity in the Transit Smoke Shop of Mr. Remmer.

Q. Now, in making the analyses which are set forth in these various schedules that you mentioned,

(Testimony of Lawrence J. Semenza.)

will you state to us whether you simply took the figures that were shown in the books or did you make your own accounting analyses of the entries in the books, together with the other evidence in the case relating to those matters?

A. In some cases I had to take my own.

Q. And will you explain what you mean by that, Mr. Semenza? [2748]

A. In the case of the Day-Night Cigar Store, the 110 Eddy Street, the records, the general ledger was not posted at the end of 1945. The books of the original entry, that is, the cash receipts record and the cash disbursements record and the journal entries, had been made, but they had not been posted to the general ledger accounts. Therefore, it was necessary for me to give effect to the posting of those entries to the general ledger, take a trial balance of the general ledger and determine the profit and loss for the year.

Q. In other words, you found the transactions entered in the daily records or cash records, but they had not been posted from those original entries into the ledger accounts?

A. At the end of 1945 they had not been.

Q. Did you then make the necessary accounting computations and adjustments to carry forward those entries into ledger accounts?

A. I did. I have set forth in schedule following each of the respective entries.

Q. And that is set forth in your exhibit in detail?

A. That is correct.

(Testimony of Lawrence J. Semenza.)

Q. Now, Mr. Semenza, will you state whether, in preparing these schedules, you accepted the computations of income shown in the partnership books and returns, or did you make your own analysis and determination of the net income of each of these partnerships, based on all of the evidence in this case?

A. I made my own for the years 1945 and 1946, where the [2749] records had not been posted.

Q. And in instances where you found that proper accounting called for making of an adjustment in determining the correct income, did you make those adjustments?      A. I did.

Q. And have you likewise set the result of your adjustments and revisions in these supporting schedules down in Exhibit M-1?      A. I have.

Q. Now, with respect to Item 12, "Equity in 21 Club and San Diego Social Club," will you state where you obtained the information and figures that are set forth on page 2 of your exhibit?

A. The exhibits admitted by Mr. Gould.

Q. Revenue Agent Gould?

A. That is correct.

Q. That is Exhibit 106, is it?

A. That is correct.

Q. That exhibit setting forth his analysis of some prior time of that particular business?

A. That's right.

Q. Mr. Semenza, as a preliminary matter to further questioning, could you explain in understandable terms the meaning of the terms "single entry

(Testimony of Lawrence J. Semenza.)

bookkeeping" and "double entry bookkeeping"?

A. Well, a true single entry system of bookkeeping only records [2750] in the ledger accounts the transactions with customers or the transactions with creditors and drawings of the proprietor or proprietors. The single entry system does not reflect the assets and liabilities of the business nor the operating accounts, such as sales, purchases and expenses. In a double entry system of bookkeeping effect is given to reflecting the assets, liabilities, proprietor's capital account and the accounts affecting income and expenses. The single entry system requires making a statement, listing in the book all assets and liabilities and there is no proof in such listing that you have found all the assets and liabilities. In a double entry system, you are in position of showing that you have balanced out all transactions and have them and entered the assets and liabilities and net worth of the business.

Q. Can you state the types of entries that are made in a single entry system to reflect the business transactions? That is, can you give us a particular example and explain to us how the entries of that transaction would be made on a single entry system and how they would be made on a double entry system? Take a sale or something.

A. For example, in a single entry the record shows receipts from John Jones of \$50.

Q. Would that be the only entry made?

A. That would be the only entry in the single entry system.

(Testimony of Lawrence J. Semenza.)

Q. What additional entries would be made in the double entry [2751] system?

A. A double entry system would show the receipt of \$50 and also show the source from which it was obtained.

Q. Is a separate ledger card maintained for John Jones?

A. In the double entry you have ledger card for cash and ledger card indicating the source of that income.

Q. And in respect to expenses such as in the nature of rent, what type of entry would be made in a single entry system and what type of entry in a double entry system?

A. In the single entry there would be a record paid for rent \$100, for example, that is all that would appear in the cash book. In the double entry system it would show disbursement of \$100. From that record a posting would be made to the cash account in the general ledger and rent account in the general ledger.

Q. Now, have you found in your accounting experience that some businesses use the single entry system and some use the double entry system?

A. Yes, they do.

Q. I take it, as a certified public accountant,†, you prefer the double entry system?

A. I recommend it highly.

Q. Is it possible to prepare a statement of profit and loss by a single entry system?

A. It is. [2752]

(Testimony of Lawrence J. Semenza.)

Q. And have you found in your experience that many business men who use the single entry system prepare their statements of net income to the United States Treasury Department on the basis of their single entry systems?

A. Yes, they still prepare tax returns from that information.

Q. Does the information that is called for on the income tax returns of the Treasury Department, in the preparation of income tax returns, relate to information as to receipts and disbursements, or does it relate to information as to assets and liabilities?

Mr. Thompson: Objected to as calling for the witness' conclusion.

Mr. Avakian: I think it is a proper question to ask the witness because of the fact——

The Court: He may answer the question.

A. The tax return calls for sources of the income and the purpose for which the expenses were incurred.

Q. Do the tax returns forms then call for computation of income on the method of receipts and disbursements or call for computation of income on the basis of net worth?

Mr. Thompson: Objected to as already asked and answered.

The Court: You may answer the question.

A. Basis of receipts and disbursements.

Q. And in your practice as an accountant and in your practice before the Treasury Department in the representation of taxpayers, [2753] do you know

(Testimony of Lawrence J. Semenza.)

of any requirement of the Treasury regulations or of the Internal Revenue Code for the maintenance by the taxpayer of information as to his assets and liabilities at any particular time? Do you understand my question?

A. Yes. The answer is there is a requirement made of adequate record in order to properly prepare the income return.

Q. Adequate record of receipts and disbursements, is that what you mean?

A. For an individual, yes.

Q. And in your examination of the books and records of the various enterprises which have been covered by the evidence in this case, have you determined whether the receipts and disbursements of these businesses, as shown by the evidence, were entered in the books of account and other records of the respective businesses?

Mr. Thompson: Objected to as calling for his conclusion, your Honor, regarding matters outside the evidence. All he can testify is that the records speak for themselves. The receipts and disbursements that were entered were entered, that is what it amounts to.

Mr. Avakian: Perhaps counsel did not understand my question. Perhaps I had better make it clear. May I restate it, your Honor?

The Court: Yes.

Q. In your examination of the evidence in this case and in [2754] your examination of the books and records of the various enterprises which have been introduced in evidence here, did you find that



(Testimony of Lawrence J. Semenza.)

the income shown by the evidence in this case was entered in the books of account of the respective businesses?      A. Yes, I did.

Q. I am going to call your attention particularly to certain books of account. First to Exhibit 127, which is entitled "Tiny's Restaurant 1946." That represents, does it not, a portion of the operation of the Menlo Club?      A. It does.

Q. Now, would you state, Mr. Semenza, what that book contains with respect to the recordation of the receipts of that segment of the business?

A. It shows the income, five months and five days, from the operation of Tiny's Restaurant.

Q. And that is entered on the basis of entries each day?      A. That is correct.

Q. As well as monthly summaries?

A. That is correct.

Q. And what did you find entered in that book in respect to the expenses of the business?

A. Under the section entitled "Expenses" I found payments covering labor, purchases of food and services rendered Tiny's Waffle Shop for light, power, telephone, normal operating supplies, advertising, and other miscellaneous expenses. [2755]

Q. Without going into detail, did you find the same type of information, both as to daily receipts and as to expenses, entered into the 1946 book with respect to the Menlo Bar operation of the Menlo Club?      A. I did.

Q. And did you also find the same entries on daily basis of the receipts and disbursements relative to



(Testimony of Lawrence J. Semenza.)

the card room portion of the Menlo Club business?

A. I did.

Q. And from those figures were you able to determine the net income of the Menlo Club for the year 1946? A. I was.

Q. And is that set forth in your Exhibit M-1?

A. It is.

Q. And will you state the amount which you determined as the net income of the Menlo Club for the year 1946? A. \$100,637.26; page 14.

Q. And does that amount differ from the amount which was shown on the return of the Menlo Club which was filed for that year? A. It does.

Q. And in your exhibit you set forth the amount which you determined as the correct income for that year? A. I did.

Q. Then how did you arrive at Mr. and Mrs. Remmer's share of [2756] the Menlo Club income for the year 1946 as shown on page 1 of your Exhibit M-1?

A. I took 55 per cent of the net income for that year as being Mr. and Mrs. Remmer's share of the profit.

Q. And you said that the profit was 100 thousand odd dollars before applying the 55 per cent factor. Was there some reduction made on account of salaries paid out of that 100 thousand?

A. On page 14 should be for the year 1945. I have given you \$100,637.26 as profit for 1946 and it was the profit in 1945. Page 15 shows profit for 1946.

Q. The figure you gave us is shown correctly in

(Testimony of Lawrence J. Semenza.)

the exhibit, you simply stated the wrong year in reciting it?      A. That is right.

Q. On page 15 you have set forth your computation of the net income of the Menlo Club for 1946 as what figure?      A. \$67,047.92.

Q. I call your attention to prosecution's Exhibit 91, which is the amended return of the Menlo Club for the year 1946, and I will ask you to state the amount of net income of the Menlo Club shown on that return and read again the amount which you computed as the correct figure for that year.

A. Exhibit 91, 1946 income tax return of Menlo Club, shows net income of \$66,596.42. My computation shows a net profit of \$67,047.92.

Q. In other words, your increase is slightly less than a [2757] thousand dollars?

A. That is correct.

Q. And then you took 55 per cent of the 67 thousand figure as Mr. and Mrs. Remmer's share and entered that on page 1 of your exhibit as their share of the income for 1946?      A. That is correct.

Q. Now, in connection with the books and records of the various functions of the Menlo Club for the year 1946, in making your analysis of the net income of the Menlo Club for that year, did you also take into account the various checks and check stub books, to the extent that they have been introduced in evidence here by the prosecution?      A. I did.

Q. And did you find any evidence in this case relative to the Menlo Club operation any receipts,

(Testimony of Lawrence J. Semenza.)

cash register tapes, or similar supporting documents?

A. There were some poker sheets introduced in evidence here.

Q. That is in respect——

A. To the Club operation.

Q. You are referring to the poker sheets introduced as Exhibits 114, 114A and 114B?

A. Yes, sir.

Q. They were only for the last day and first day of each year? A. That is correct. [2758]

Q. Did you find in evidence any poker sheets for the remaining days of the year?

A. I do not recall.

Q. Would it have been proper accounting procedure for you to have attempted to verify the entries in the books of account by examining the daily poker sheets?

Mr. Thompson: Objected to as immaterial what proper accounting procedure would have been with regard to exhibits not in evidence.

Mr. Avakian: Your Honor, my point is this—Mr. Weaver testified they had all the poker sheets but only——

The Court: You are asking now——

Mr. Avakian: I am asking if, in determining whether these books are accurate, it would have been logical for him to verify entries against the daily poker sheets which Mr. Weaver said they had, and still have, but were not brought into court. In other words, it is the accuracy of the books here challenged.

(Testimony of Lawrence J. Semenza.)

The Court: You may answer the question.

A. In order to make an audit, I would have had to have had them.

Q. When you obtained from Mr. Weaver on July 11, 1949, the various books and documents listed on Exhibit 70 which you mentioned a moment ago, did he make any statement to you as to whether or not he had in his possession at that time cash [2759] register tapes of some of the businesses involved in this case?

Mr. Thompson: Objected to as calling for hearsay.

The Court: Objection sustained.

Mr. Avakian: We would like to show verifying data which would show the correctness of the books is in the possession of the prosecution and they won't bring them in.

The Court: Objection sustained.

Mr. Avakian: Your Honor, it is important for us to show whether or not these books were accurate, because the prosecution charged they are inaccurate. Now, we would like to show that they have in their possession the data which would show the accuracy or inaccuracy and they have not produced the cash register tapes which would show the books of account are correct. Your Honor has permitted Mr. Weaver to say the books are inadequate, so why can't we show he has the books and refuses to produce the data?

The Court: I will let the question be answered.

(Question read.)

(Testimony of Lawrence J. Semenza.)

A. It is my recollection that he indicated there was such information.

Q. You have never personally been able to examine any of that type of material?

A. I have not.

Mr. Thompson: Objected to as calling for conclusion. [2760] As a matter of fact, your Honor, the evidence shows he was turned loose in the room and given permission to examine anything in there and take with him what he wanted to take out of the room. That is Mr. Semenza's own testimony and now Mr. Avakian asks him if he wasn't able to examine other records.

The Court: Objection sustained.

Q. Did you at any time actually examine those other records which remained in Mr. Weaver's office after you took the documents listed on Exhibit 70?

A. I did not.

Q. And it is true, is it not, at the time you took those books and records, you took them not in connection with this case, but in connection with another case?

A. That is true.

Q. And you took what you thought at that time was sufficient for the immediate purpose you had at that time?

Mr. Thompson: That calls for conclusion.

The Court: Objection sustained.

Q. Will you state whether in your examination of the books and records in evidence in this case, as to these various enterprises for the years 1944,

(Testimony of Lawrence J. Semenza.)

1945 and 1946, the books and records disclosed the existence of partnerships?

Mr. Thompson: Objected to, that calls for conclusion, your Honor.

The Court: Well, he may answer. [2761]

Mr. Thompson: The records are the best evidence. They speak for themselves as to what the enterprises are.

The Court: He may answer.

A. The records indicate existence of partnerships.

Q. Do they show capital accounts for various partners? A. They do.

Q. And the names of the partners?

A. They do in all cases except the B. & R. Smoke Shoppe.

Q. In the case of the B. & R. Smoke Shoppe the only records are diaries of daily receipts?

A. That is correct.

Q. No books of account were maintained for the B. & R. Smoke Shoppe as far as you know?

A. None that I know of.

Q. Would you state on the basis of what testimony or other evidence you allocated the assets of the B. & R. Smoke Shoppe on a partnership basis in preparing Exhibit M-1?

Mr. Thompson: Objected to on the ground the question invades the province of the jury.

Mr. Avakian: I do not think so; I am asking him to state the evidence.

The Court: Let us have the question.

(Testimony of Lawrence J. Semenza.)

(Question read.)

The Court: I think the question merely asks for the evidence. [2762]

Mr. Thompson: I do not believe so. He is not asking the witness for the basis of any particular figure in the schedule or exhibit, he is asking for recitation of the evidence upon which he bases a legal conclusion that the assets of the B. & R. Smoke Shoppe should be allocated on a certain belief. The fact that he did so allocate is all he can testify to, as I view the situation. He is not competent to review all the evidence in the case and state as to such an item of evidence he reached the conclusion that this is a real partnership.

Mr. Avakian: No, your Honor, all the prosecution's accountants have testified that particular items in their exhibits were based upon testimony of Mr. so and so or exhibit so and so and so on, and this is simply an explanation.

The Court: All right, why don't you direct this witness' attention to a particular item and ask the same.

Mr. Avakian: It was with respect to the B. & R. Smoke Shoppe. I will be glad to do it.

Q. I am directing my question now, Mr. Semenza, to page No. 4 of Exhibit 1, which is designated B. & R. Smoke Shoppe, and which contains at the bottom under the heading, "Partners' Capital Accounts," certain amounts paid Mr. Remmer, Mr. Kyne and Mr. Lando. In preparing page 4 and

(Testimony of Lawrence J. Semenza.)

in carrying forward from page 4 to your summary sheets on pages 1 and 2 the data in respect to the B. & R. Smoke Shoppe, did you have in [2763] mind in part the partnership returns of income of the B. & R. Smoke Shoppe, designated prosecution's Exhibits 78 and 79 and defendant's Exhibit "O," which I now hand you here?

A. Yes, I did.

Q. And did you also have in mind the testimony of Mr. Lando and Mr. Kyne with respect to the B. & R. Smoke Shoppe business? A. I did.

Q. I will hand you prosecution's Exhibit 112, which is designated 110 Eddy, will you state preliminarily what kind of a book that is? What does it represent?

A. It represents general ledger for the 110 Eddy Street enterprise.

Q. And did you find, in your examination of the books and records of the 110 Eddy business, which have been introduced in evidence here, a record was maintained of the receipts and disbursements of that business? A. I did.

Q. And was that kept on the basis of a daily record? A. It was.

Q. And was there also a ledger maintained for that business, showing the assets and liability accounts? A. This is the ledger.

Q. You are referring to Exhibit—

A. 112. [2764]

Q. Would you state then did the 110 Eddy



(Testimony of Lawrence J. Semenza.)

Street business keep single entry books or double entry books?      A. Double entry.

Q. And have you found in this case any evidence of any income of the 110 Eddy business which was not entered in the books of account of that business during the three years involved in this indictment?

A. I have not.

Q. Now would you state what type of books, that is, single entry or double entry, were maintained by the Day-Night Cigar Store business?

A. Double entry.

Q. And I hand you prosecution's Exhibit 117, is that the ledger account of that business?

A. The general journal and general ledger of the Day-Night Cigar Store.

Q. And did the books of that business maintain a daily record of receipts and disbursements?

A. They did.

Q. And also a record of asset and liability accounts?      A. That is right.

Q. And did you find from the evidence in this case any evidence of income of the Day-Night Cigar Store which was not entered in those books of account?      A. I did not. [2765]

Q. Would you state what type of books were maintained by the Transit Smoke Shoppe, that is, single entry or double entry?

A. Double entry.

Q. And did that business maintain a record of daily receipts and disbursements?      A. It did.

(Testimony of Lawrence J. Semenza.)

Q. And likewise a record of asset and liability accounts?

A. A general ledger was not maintained for that business.

Q. In other words, the records were in existence but the posting had not been made?

A. They had not opened a general ledger.

Q. And did you find from the evidence in this case any evidence of income of the Transit Smoke Shop which was not entered in the books of account?

A. I did not.

Q. In sheet 1 of defendant's Exhibit M-1 you have set forth certain amounts as either profit or loss, representing Mr. Remmer's share of the profit or loss, as the case may be, from the 21 Club and San Diego Social Club for the years 1944, 1945, and 1946?

A. I have.

Q. Would you state where you obtained that information?

A. From the revenue agents' reports and examinations for those years.

Q. That is, those reports of Revenue Agent Gould received [2766] here in evidence?

A. They are.

Q. And you have set forth on page 1 of Exhibit M-1 the exact amounts which Revenue Agent Gould determined in his report as Mr. Remmer's share of the profit or loss of that business for each of the three years?

A. I did.

Q. Now with respect to page 2 of Exhibit M-1, I call your attention to item No. 20, which is designated "Cash in Safe Deposit Boxes and Safes" and

(Testimony of Lawrence J. Semenza.)

particularly to the question mark which you have entered in each of the columns. Can you explain why you entered a question mark there?

A. The evidence indicates, the witnesses indicate, that there was cash in safe deposit boxes and safes at all times during this period, yet none of them testified any amount. There were no records here that would indicate any amount in the boxes.

Q. Now is it necessary, in preparing financial statements of assets, liabilities and net worth, to set forth the value of each asset and each liability in order to arrive at a correct net worth figure?

A. It is.

Q. And were you able to arrive at a specific net worth figure from analysis of the evidence in this case?

A. No, I was not. [2767]

Q. I note under the heading of "Total Assets," you have entered in each column a specific amount, followed by the words, "Plus cash." Will you explain what you mean by that?

A. The amount entered there is the sum of the figures included in that column and in addition to that the evidence indicates that there was cash in boxes, so that in addition to the amount shown you would have to add the cash, if you knew what it was.

Q. And that is true, is it, of the four year-ends shown on that page?

A. That is true.

Q. Now I note at the bottom after listing and totaling liabilities, you have a figure of net worth for each December 31st, which in each instance is

(Testimony of Lawrence J. Semenza.)

followed by the words "Plus cash." Would you explain what that means?

A. I take the difference between the assets shown and the liabilities and I arrive at the net worth, but that net worth does not include any item of cash, consequently, net worth figures should be increased by the amount of cash that was on hand at that date.

Q. In computing net income on the net worth method, is it necessary to determine, as one of the steps in the procedure, the increase in net worth from the beginning to the end of each year?

A. It is. [2768]

Q. Were you able to determine the increase in net worth of Mr. and Mrs. Remmer from the beginning to the end of each year in this case?

A. Only to the extent of subject to the addition in cash could that amount be determined.

Q. If the amount of cash at December 31st of each year was different in one year than it was in another year, would the difference in cash have to be taken into account in computing net income on the net worth method?

A. It would.

Q. On page 3 was set forth certain figures entitled "Elmer and Helen Remmer changes in Net Worth 1944 to 1946, Inclusive." The first line is entitled "End of period." Would you state the meaning of that term and the figures that have been entered in connection with it for each year?

A. From page 2 schedule page, I take the net worth at the end of December, 1944, which is \$146,-

(Testimony of Lawrence J. Semenza.)

922.62, plus cash. I do likewise for the other two years.

Q. And then the next line is entitled "Beginning of Period." Will you explain what that means and the meaning of the figures that are entered opposite it?

A. The beginning of the period of 1944, would be the net worth at the end of 1943, and the beginning net worth of 1945, would be the net worth at the end of 1944, and the beginning net worth of 1946, would be the net worth at the end of [2769] 1945.

Q. And then the last column is entitled "Three years combined." Can you explain the words and meaning of the figures that are entered under that column for the end and beginning of the period?

A. The end of the period would be the net worth shown on page 2 at December 31, 1946, \$228,042.45, plus cash, and the net worth at the beginning of the three-year period would be the net worth shown on page 2 at December 31, 1943, which is \$119,539.83, plus cash.

Q. Now the last line of this page is entitled "Increase or Decrease" and contains figures which are followed in each instance by the designations, "Plus or Minus Change in Cash." Could you explain the meaning of those figures and words. Let us take as an illustration for that purpose, Mr. Semenza, the figure that you have in the last column as the total for three years combined.

A. The amount of net worth at the end of 1946,

(Testimony of Lawrence J. Semenza.)

is \$228,042.45, plus cash. The net worth at the beginning of the three-year period is the net worth of December 31, 1943, which is \$119,539.83, plus cash. The difference between beginning and ending net worth is \$108,502.62, plus or minus any change you would have in cash. There is indication that cash existed, therefore, the difference in net worth there must be increased or decreased by any change in cash between the two dates. [2770]

Q. Just for illustration purposes, will you explain to us how that would work. Let us assume it both ways. First, let us assume that from the end of 1943, to the end of 1946, the amount of cash increased by ten thousand dollars. What would then be the figure as increase in net worth instead of \$108 thousand?

A. It would be \$118,502.62.

Q. And let us assume the reverse, that from the end of 1943, to the end of 1946, the amount of cash decreased by ten thousand dollars, what then would you have in place of 108 thousand dollar figure?

A. \$98,502.62.

Q. And it is your testimony that you can not determine just what the change in net worth was without having the amount of change in cash for the year?

A. That is correct.

Q. On page 2 of the exhibit on line 29 you have the item, "J. B. Scarlett," with a question mark at the end of 1946, and with a footnote reference for that question mark, and also for the figure of total liabilities, reading as follows: "Liabilities

(Testimony of Lawrence J. Semenza.)

would be increased and net worth decreased by any liability determined to be due Mr. Scarlett at December 31, 1946." Would you explain the meaning of that item?

Mr. Thompson: I would say it is self-explanatory, your Honor. [2771]

The Court: You may explain it.

A. There is evidence in the testimony of Woodburn, Sr., and Jr., that a liability might have existed.

Q. At December 31, 1946?

A. December 31, 1946. There was no evidence in the record that would indicate that it actually did.

Q. In other words, from the testimony that was received in evidence, you were unable to determine on the basis of that testimony whether or not that liability was in existence at the end of 1946?

A. That is correct.

Q. So you simply entered a question mark?

A. That is correct.

Q. And if it should be determined by the jury that there was a liability at that time, the amount of that liability would decrease the net worth computation shown in your exhibit?

A. That is correct.

The Court: We will take a recess now but I will ask counsel to remain.

(Jury and alternate jurors admonished and excused at 4:00 p.m.)

(In the absence of the jury.)

The Court: The Court will enter an order in the record to the effect that the defendant be, and he is hereby ordered to be here tomorrow at 10:00 o'clock at the trial and at every subsequent session of the Court during this trial.

(Recess taken at 4:00 o'clock.) [2772]

Tuesday—February 12, 1952

10:20 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. SEMENZA

resumed the witness stand on further

Direct Examination

By Mr. Avakian:

Q. Mr. Semenza, on page 1 of your Exhibit M-1, you have set forth as the gross income included in the individual income tax returns of Mr. and Mrs. Remmer for the year 1946, the amount of \$37,254.31. I call your attention to prosecution's Exhibits 5 and 6, which are the 1946 returns of Mr. and Mrs. Remmer, individually, and is that the amount shown on the face of the returns as the gross income of the two combined? A. Yes.

Q. And is that the source of the figure which you have entered on Sheet 1 of Exhibit M-1?

A. It is.



(Testimony of Lawrence J. Semenza.)

Q. Now from your examination of Exhibits 5 and 6, does it appear to you that in the computation of that gross income figure, whoever prepared the return failed to subtract from that figure the losses shown on the return in respect to the B. & R. Smoke Shoppe and 21 Club and San Diego Social Club?

A. In reporting the gross income on the face of the return they did not give effect to the loss of the 21 Club and B. & R. Smoke Shoppe, but they did on page 3 of the return. [2773]

Q. In other words, they subtracted it after they arrived at the gross income and before arriving at the net income? A. That is correct.

Q. What would be the proper method of handling losses of those two types?

A. Those losses should have been deducted from the gross income on page 1.

Q. In either event the net income would be the same, would it not? A. That is correct.

Q. Now if you were to proceed further with Sheet 1 of Exhibit M-1, so as to compute not only the gross income which you have shown, but the net income with respect to the year 1946, would any adjustment be made on account of the manner in which those two losses were deducted on the returns involved? A. Yes.

Q. And what would be the amount of that adjustment?

A. The amount of the adjustment would be the sum of the losses of the two enterprises, the total of which is \$6,236.45.

(Testimony of Lawrence J. Semenza.)

Q. Now, Mr. Semenza, if you were asked to prepare income tax returns of Elmer and Helen Remmer for the years 1944, 1945, and 1946, on the basis of the testimony and exhibits in this case, can you state the amount of gross income which you would compute for the two of them combined in each of the three years?

A. 1944, \$11,253.07; 1945, \$74,958.82, and 1946, \$38,215.76. [2774]

Q. Those are the amounts which are set forth on page 1 of your Exhibit M-1?

A. That is correct.

Q. And in your opinion, as an accountant, would that be the proper computation to make of the gross income for each of those years?

A. Based on the evidence here it would be proper.

Q. Now with respect to pages 18 to 21, inclusive, of Exhibit M-1, which set forth in detail the debits and credits in Elmer Remmer's account No. 10 in Cal-Neva, Inc., a corporation, that is based, is it not, on Exhibit 146, which was introduced in this case, the general ledger of Cal-Neva, Inc., with the adjustments that you have set forth in your Exhibit M-1?

A. It is.

Q. And Cal-Neva, Inc., kept its books on the basis of the fiscal year ending April 30th of each year?

A. That is correct.

Q. And were there a number of year-end entries made as of April 30th in the Cal-Neva books which related to transactions that actually occurred before

(Testimony of Lawrence J. Semenza.)

the preceding December 31st? A. There were.

Q. And Mr. and Mrs. Remmer's tax returns were on the basis of the calendar year, were they not? A. That is correct.

Q. And have you adjusted the entries in Exhibit 146 so as to [2775] set forth the transactions as of the time that they actually occurred, rather than as of April 30th, the date of the entry in Cal-Neva Books? A. I have.

Q. Now with those adjustments you have made, will you state the status of the account at the end of 1943? A. \$23,152.77.

Q. And what does the amount represent?

A. The amount due Cal-Neva, Inc., by Mr. Remmer.

Q. Were there various transactions of both a debit and credit nature during 1944?

A. There were.

Q. That is, Mr. Remmer made payments to Cal-Neva and Cal-Neva made payments to Mr. Remmer? A. That is correct.

Q. And what was the status of the account at the end of 1944?

A. The sum of \$18,361.68 was owed to Cal-Neva by Mr. Remmer.

Q. In other words, during the year 1944, the net effect of the transactions between them was that Mr. Remmer paid back about \$5,000 of the amount he owed at the end of 1943?

A. That is correct.

(Testimony of Lawrence J. Semenza.)

Q. What was the status of the account at the end of 1945?

A. There was due Cal-Neva from Mr. Remmer the sum of \$83,732.33.

Q. During the year 1945, were there likewise both debit and [2776] credit transactions shown in the account?

A. Actually there were only debit transactions. The one credit item shown on page 19 is to adjust one of the other debit entries.

Q. And the net effect of the transactions during 1945 then was that Mr. Remmer borrowed a net of approximately 65 thousand dollars from Cal-Neva during that year?

A. That is correct.

Q. Now, during the year 1946 was there any time when the account was in balance?

A. In June of 1946, Mr. Remmer paid up the amount which he owed Cal-Neva.

Q. In other words, the full amount of 83 thousand dollars, which he owed at the end of 1945, was paid back to Cal-Neva in June of 1946?

A. That is correct.

Q. At that time he owed Cal-Neva nothing, is that correct?

A. That is right.

Q. Subsequently, during 1946 and prior to the end of the year, were there additional transactions in that account?

A. Yes, there were amounts paid for the account of Mr. Remmer, withdrawn by him, and also amounts put back into Cal-Neva by him.

Q. And specifically did he withdraw 50 thousand

(Testimony of Lawrence J. Semenza.)

dollars for payment to Mr. Graham and another 50 thousand dollars for payment to Mr. McKay on September 24, 1946? [2777]      A. He did.

Q. And then on September 28th did he deposit 50 thousand dollars in Cal-Neva as a credit to his account?      A. He did.

Q. What was the balance of the account at the end of 1946?

A. \$60,742.39 was owed to Cal-Neva by Mr. Remmer.

Q. In other words, after balancing the account in June he made another borrowing during the balance of the year of 60,000 odd dollars?

A. That is correct?

Q. Now, in 1947, were there further transactions in that account?      A. There were.

Q. And both of a debit and a credit nature?

A. Yes.

Q. What was the balance at the end of 1947?

A. \$21,742.39 was owed to Cal-Neva by Mr. Remmer.

Q. Does that mean then that the net effect of the transactions during 1947 was that Mr. Remmer paid back approximately 44 thousand dollars during 1947 of the balance he owed at the end of 1946?

A. That is correct.

Q. And did he make any further payments during 1948?

A. There were two payments in 1948.

Q. And payments by Mr. Remmer to Cal-Neva?

A. To Cal-Neva. [2778]

(Testimony of Lawrence J. Semenza.)

Q. Had he borrowed any additional money from Cal-Neva in 1948?

A. Well, not up to April 30, 1948.

Q. That was the close of the fiscal year of the corporation?

A. That is correct.

Q. And what was the final amount that he owed Cal-Neva at April 30, 1948?

A. \$10,742.39.

Q. And that is the last entry that is shown in Exhibit 146, is it not?

A. That is correct.

Q. And you know, do you not, that shortly thereafter the Cal-Neva corporation was dissolved and the property was sold by Mr. Remmer?

A. Yes.

Mr. Avakian: No further questions.

**Cross-Examination**

By Mr. Thompson:

Mr. Thompson: Your Honor, I would like to place Exhibit 183 and defendant's Exhibit M-1, page 2, where the jury can see them and make a comparison.

The Court: Very well.

Mr. Thompson: I will hand Exhibit 183 to the witness. You have a copy of Exhibit M-1, do you not, Mr. Semenza?

A. I have, Mr. Thompson.

Q. At the outset, Mr. Semenza, I believe you testified that [2779] you prepared page 2 of Exhibit M-1, which represents a list of assets and liabilities for Helen and Elmer Remmer at December 31, 1943;

(Testimony of Lawrence J. Semenza.)

December 31, 1944; December 31, 1945, and December 31, 1946, is that correct?

A. That is correct.

Q. And that is the same character of information, is it not, as set forth on plaintiff's Exhibit 183?

A. Yes, it is list of assets of Elmer F. Remmer and Helen Remmer.

Q. And according to Mr. Weaver's testimony, those assets were valued and computed at each year-end here involved, that is, 1943, 1944, 1945 and 1946?

Mr. Avakian: Just a moment—I do not so understand the testimony. I believe it was Mr. Brady testified regarding Exhibit 183. The question assumes a fact contrary to the evidence.

Mr. Thompson: Perhaps I misquoted. It should have been Mr. Brady, is that correct?

A. I think it was.

Q. First, Mr. Semenza, let us take the items as to which there appears to be no disagreement. Your first item, Item 1, Bank of America, Tracy Branch, is the same item which is set forth as Item 17 on Exhibit 183, is it not?

A. That is correct. [2780]

Q. And the balances you show at each year-end in that bank account on Exhibit M-1 are the same as on Exhibit 183?

A. That is correct.

Q. And you draw that information from the records of the Bank of America, Tracy Branch, which the government produced here in evidence, is that correct?

A. I did.

(Testimony of Lawrence J. Semenza.)

Q. Now, referring to your Item No. 2, Bank of America, Grand Lake Branch, Oakland, California, that is the same, is it not, as Item 20 on government's Exhibit 183? A. It is.

Q. And the year-end balances in that account for the years 1945 and 1946 are the same in Exhibit M-1 as in Exhibit 183? A. They are.

Q. And you also obtained that information from the records of the Bank of America, Grand Lake Branch, which the government produced in evidence? A. I did.

Q. Next item you have listed as Item 3 in Exhibit M-1 is headed "United States Government Bonds" and that is the same, is it not, as Item 1 on government's Exhibit 183? A. It is.

Q. And the year-end balances that you show as of the year 1946 listed on each exhibit are the same on Exhibit M-1 and the same on Exhibit 183? [2781]

A. They are.

Q. You obtained the information from which you prepared that item of your Exhibit M-1 from the Treasury Department records which the government produced here in evidence, did you not?

A. I did.

Q. And those are Exhibits 149 and 150, or do you have the record?

A. I do not have the record of that. I believe that is correct, however.

Q. Exhibits 150, and 150A. Now, Mr. Semenza, if you eliminated from this record, Exhibit 150 and Exhibit 150A, which is a record of the Treasury De-



(Testimony of Lawrence J. Semenza.)

partment of the United States, what record did you find in other books and records here in evidence relating to the purchase and ownership of United States Government bonds by Elmer Remmer or Helen Remmer?

A. My recollection in the exhibit of 110 Eddy Street there is an entry charging Mr. Remmer with three thousand dollars withdrawn from that business for the purchase of bonds.

Q. I believe that is substantially correct. Would you like to have the book and verify that?

Mr. Avakian: I think that is correct.

A. I think it is correct.

Q. And with that one exception, is there any other record in evidence, other than the Treasury Department records, showing the purchase and ownership of government bonds by Elmer and [2782] Helen Remmer during the years in question?

A. With the exception of that 110 Eddy, I recall none.

Q. Now, the next item on Exhibit M-1, your Item No. 4, records an amount due from Hazel Harris, is that correct? A. That is correct.

Q. And that is the same as Item 13 on government's Exhibit 183? A. It is.

Q. And the year-end balances shown on Exhibit M-1 for that item at the end of 1945 and at the end of 1946 are the same as shown on government's Exhibit 183? A. They are.

Q. Do you recall now on what evidence or exhibits you based that entry in Exhibit M-1?

(Testimony of Lawrence J. Semenza.)

A. It is my recollection that Mrs. Harris testified, and there are also checks evidencing various payments from Mrs. Harris to Mr. Remmer.

Q. I hand you Exhibit 28, Mr. Semenza, are those the checks regarding payments of a loan from Mr. Remmer to Hazel Harris to which you refer?

A. They are.

Q. And according to the testimony, what was the original amount of that loan?

A. I do not recall at this time; I think it was two thousand or \$2500.

Q. I believe the record shows that Mrs. Harris testified it [2783] was \$2500, as did her husband, Mr. Harris. The checks in Exhibit 28, regarding payments on that loan, total seven in number, do they not?      A. They do.

Q. And according to the checks, what amounts were paid on the loan in the year 1945?

A. \$750.

Q. In the event those were the only payments on the loan in the year 1945, the loan having been made in the year 1945, the year-end balance at December 31, 1945, should have been \$1,750, should it not?

Mr. Avakian: Just a moment, your Honor, I object to that question as assuming facts contrary to the evidence, because there is other evidence in this case, consisting of the bank deposit slips in Mrs. Remmer's account in the Grand Lake Branch and of the bank ledger statements of Mrs. Harris' account, from which it appears, as both the govern-

(Testimony of Lawrence J. Semenza.)

ment's exhibit and Mr. Semenza's exhibit show, the balance at the end of 1945, was \$1,250. Now there is no evidence to support the assumption in Mr. Thompson's question that only \$750 had been paid up to that date and there is no conflict between the two exhibits. Mr. Brady reached exactly the same conclusion as Mr. Semenza. As I stated, there are these other documents in evidence which would support that.

The Court: Let me have the question. [2784]

Mr. Thompson: I am entitled, I believe, to test Mr.—

The Court (Interceding): Wait a minute, Mr. Thompson. Let me have the question.

(Question read.)

The Court: Objection overruled.

A. My recollection also the testimony of Mrs. Harris was to the effect there were some other payments for which she did not have checks.

Q. Is it not true that Mrs. Harris testified that during the years 1945 and 1946 she made nine \$250 payments, that she had lost or misplaced two of the checks and she did not know whether those two checks represented payments in 1945 or payments in 1946?

A. I know she testified that she had lost some checks during that period and I believe she also indicated that the amount due to Mr. Remmer was \$1,250 at the end of 1945.

Q. In the event she did not so testify, that would

(Testimony of Lawrence J. Semenza.)

not be the basis for your figures in the exhibit?

Mr. Avakian: Objected to as argumentative and speculative.

The Court: You may answer the question.

A. I would have to draw from the evidence in the record.

Q. Now in making the entries on your Item 4 in Exhibit M-1, which is the same as Item 13 in government's Exhibit 183, you relied upon the records and testimony of Hazel Harris, is that [2785] correct? A. I did.

Q. And in the event the testimony and records produced here in court by Hazel Harris should be eliminated, what entries did you find in defendant's books and records and in the books and records of enterprises in which he was interested, here in evidence, relating to a loan to Hazel Harris?

Mr. Avakian: Objected to as incompetent, irrelevant and immaterial. There is no requirement anywhere that books and records of a business maintain records of private loans. There is no foundation laid to show that it is custom of business people to keep records of private loans not related to the business, and the question is argumentative.

The Court: Objection overruled. Answer the question. Do you understand the question?

A. I do. I found no records in any of the enterprises of any indication of a loan by Mr. Remmer to Mrs. Harris.

Q. Did you find any record in evidence here whatsoever of any loan to Mrs. Harris, other than

(Testimony of Lawrence J. Semenza.)

the records and testimony of Mr. and Mrs. Harris and the government bank exhibits here produced in court?      A. I can't recall anything.

Q. The next item on Exhibit M-1, Item 6, records an obligation due Mr. Remmer from Albert Villaudy, is that correct?

A. That is correct.

Q. And that is the same item as appears as No. 24 on government's [2786] Exhibit 183?

A. It is.

Q. And the entries for the year-ends 1943, 1944, 1945 and 1946 are the same in Exhibit M-1 and Exhibit 183?      A. They are.

Q. Now we will refer to Item No. 12 on Exhibit M-1, which is stated as "Equity in 21 Club and San Diego Social Club." That is the same item combined as set forth as Items 18 and 19 in government's Exhibit 183, is it not?

A. That is correct

Q. And if you take Items 18 and 19 of government's Exhibit 183, where the interest in the 21 Club and San Diego Social Club has been separated and combine them, that is, add them together, do you not arrive at the same result that you have in entering them as one item, No. 12, in your Exhibit M-1?      A. That is correct.

Q. And the year-end balances are the same for the years 1943, 1944, 1945 and 1946?

A. They are.

Q. Your next item, No. 13, on Exhibit M-1, is

(Testimony of Lawrence J. Semenza.)

the same, is it not, as Item No. 9 on government's Exhibit 183?      A. It is.

Q. And the amount shown as investment in Cal-Neva, Inc., capital stock, as of December 31, 1946, on Exhibit M-1 is the same as on Exhibit [2787] 183?      A. That is correct.

Q. Your next item, No. 14, Mountain City Consolidated Copper Company stock on Exhibit M-1 is the same as Item 10 on Exhibit 183, is it not?

A. That is correct.

Q. And the balance at December 31, 1946, for that item, which is \$2,400, is the same on government's Exhibit 183 and on your Exhibit M-1?

A. It is.

Q. Now the next item is the same, as I view your Item 16, Moraga Estates property, is not that the same item as set forth on Item 14 on government's Exhibit 183?      A. It is.

Q. And the year-end balances as of the ends of the years 1943, 1944, 1945 and 1946 for the item, Moraga Estates property, are the same on Exhibit M-1 and Exhibit 183?      A. They are.

Q. What is the source of the information from which you obtained the figures set forth as Moraga Estates property?

A. There were exhibits presented by the Title Company in Oakland or Alameda, choosing the purchase of this property, and the testimony of the man who presented it.

Q. And those are the escrow records produced

(Testimony of Lawrence J. Semenza.)

by the Oakland Title & Insurance Company and Alameda East Bay Title Company?

A. I think that is the title. [2788]

Q. And if you eliminated those government exhibits relating to the Moraga Estates property from the record in this case, what record or entry do you find in other books and records *here* in evidence, showing the investment by Mr. and Mrs. Remmer, or either of them, in that property?

Mr. Avakian: Objected to as incompetent, irrelevant and immaterial, whether investment for residential property are reflected in the records of a business enterprise or not.

The Court: Objection overruled. Answer the question.

A. I find nothing in the books of these enterprises indicated any investment property.

Q. Or in any other books, other than the government exhibit produced through the two title companies mentioned, is that correct?

A. Well, I know of no other books here of these enterprises.

Q. Your next item, which I believe is identical, is set forth as Item 17 on Exhibit M-1, Richmond Annex property. Is not that identical with Exhibit 183, Item 15?      A. It is.

Q. And are not the year-end balances for that item, Richmond Annex property, for the year-ends 1943, 1944, 1945 and 1946, the same on Government's Exhibit 183 and on Exhibit M-1?

A. They are.

(Testimony of Lawrence J. Semenza.)

Q. What is the source of the information from which you obtained the figures entered for the item, Richmond Annex property? [2789]

A. There are exhibits presented here by the title company, escrow sheets, and it is my recollection there was some evidence of money borrowed from the Bank of America to buy some of this property.

Q. The records of the Bank of America are Exhibit 40, are they not? That is the record of a loan made by Helen and Dorothy Remmer from the Bank of America?

A. I believe it is. It may possibly be on the Moraga Estates property, I don't recall.

Q. And the escrow records to which you refer relating to the Richmond Annex property, are the records produced as government's exhibits through the witness from Alameda East Bay Title Company and the Oakland Title Insurance Company?

A. I believe that was it, unless the Contra Costa Title Company. This was in Contra Costa County, so it may possibly have been another title company.

Q. There are two sets of title company escrow records in evidence, are there not?

A. That is right.

Q. And with the exception of those two sets of government exhibits, did you find any other record in any of the books, records, exhibits and papers in evidence here, relating to the investment in the Richmond Annex property?

Mr. Avakian: We object, as incompetent, ir-



(Testimony of Lawrence J. Semenza.)

relevant and immaterial, for the reason previously stated and in addition, [2790] your Honor, for the reason that it affirmatively appears from the evidence that there are books and records of these enterprises not in evidence here but in the possession of the government, which might contain such information.

The Court: Objection overruled.

A. I know of no entries in the books and records in evidence here showing any investment in that property.

Q. Now your next item, Item 18, on Exhibit M-1, Moraga Highlands property, is the same, is it not, as Item 21 on government's Exhibit 183?

A. It is.

Q. And the year-end balances for that item at December 31, 1945 and December 31, 1946, are the same on Exhibit M-1 and government's Exhibit 183, are they not?

A. They are.

Q. What was the source of the information from which you obtained the data which you have set forth opposite Item 18, Moraga Highlands property?

A. Exhibits of the title company showing the escrow on the particular purchase.

Q. And with the exception of those government exhibits did you find any evidence here in court, any other entry or record relating to the investment in Moraga Highlands property?

Mr. Avakian: Objected to as incompetent, irrelevant and immaterial, whether any records of

(Testimony of Lawrence J. Semenza.)

the purchase of residential [2791] property are maintained in the records of business enterprises, and also for the further reason it appears from the evidence the prosecution has in its possession other records which have not been produced in court.

The Court: Objection overruled.

A. I found no evidence in the records in evidence here of any purchase of Moraga Highlands property.

Q. Now the next item on Exhibit M-1 which appears to be the same as on Exhibit 183 is your Item 22, "Notes Payable to Bank of America on Moraga Estates," and is that item not the same as Item 28 on government's Exhibit 183? A. It is.

Q. And are not the year-end balances for the items, "Notes Payable to Bank of America on Moraga Estates" the same at December 31, 1943, and December 31, 1944, and the balance of the years on government's Exhibit 183 and your Exhibit M-1?

A. They are.

Q. What is the source of the information from which you made those entries on your Exhibit M-1?

A. Evidence belonging to the Bank of America.

Q. And you refer, do you not, to Exhibit 40? I hand you Exhibit 40, Mr. Semenza, which is the transcript of the account of Helen Remmer and Dorothy A. Remmer—

Mr. Avakian: If it will save time, we are willing to accept Mr. Thompson's designating—I do not think the number [2792] is important, it is the bank.

(Testimony of Lawrence J. Semenza.)

Mr. Thompson: The name of the bank here apparently does not appear.

Q. The Oakland County office of the Bank of America, is that the exhibit on which you relied in setting up the item? A. It is.

Q. Your Item 22.

A. I believe the testimony of the bank representative ties to this particular exhibit, so it would be the Bank of America.

Q. And if you eliminated that exhibit, government's Exhibit 40, and the testimony of the bank official who produced it from the record, do you find any evidence here in court, any other record or entry, relating to the obligation of Mr. or Mrs. Remmer and Dorothy Remmer to the Bank of America?

Mr. Avakian: Just a moment—that is objected to, your Honor, as incompetent, irrelevant and immaterial as to whether a record of a private loan for residential property was maintained in the records of business enterprises. No foundation laid to show that there is any legal requirement that any record be maintained of any such private loans and the record affirmatively shows that there are other documents and records in possession of the prosecution which have not been presented in court.

The Court: Objection overruled.

A. I found none. [2793]

Q. Your next item on Exhibit M-1, Mr. Semenza, Item 23, entitled "Due Graham and McKay

(Testimony of Lawrence J. Semenza.)

on Purchase of Cal-Neva Stock," is the same, is it not, as Item 29 on government's Exhibit 183?

A. It is.

Q. And the balance shown to be due on the loan at December 31, 1946, is the same on Exhibit M-1 and Exhibit 183?

A. It is.

Q. The next item, Mr. Semenza, under "Liabilities," Item 24 on Exhibit M-1, due Ogden F. Monahan, is the same, is it not, as Item 30 in government's Exhibit 183?

A. It is.

Q. And the entries on that item as of the year-ends 1943 and 1944 are the same on both exhibits, M-1 and 183?

A. They are.

Q. On what evidence did you rely in setting up the information in Item 24, due Ogden F. Monahan?

A. There is a judgment, I think of the Superior Court of San Francisco County, in that amount, a photostatic copy of it, I believe, was in evidence here. Ogden Monahan testified, if I recall correctly, that the judgment was satisfied in 1945.

Q. There is also, is there not, a certified copy of the satisfaction of judgment as a government exhibit?

A. That's correct.

Q. Now if you eliminated from the record in this case the certified copy of the judgment obtained by Mr. Ogden Monahan [2794] against Mr. Remmer, the certified copy of the satisfaction of that judgment, and the testimony of Ogden F. Monahan, do you find any other entry or record in the ex-

(Testimony of Lawrence J. Semenza.)

hibits, records, books and documents here in evidence relating to that obligation?

Mr. Avakian: Objected to, your Honor.

The Court: You have covered the grounds in objections to similar questions. Have you any additional grounds?

Mr. Avakian: Yes, your Honor, in addition to the grounds made to similar questions, I would like to make this additional ground, that there is no difference between obligations of this kind and obligations for furniture or an automobile or meals or clothing or anything else. There is no requirement that any business man keep a record in his business record of those personal matters, which have no bearing on the computation of income. They do not enter into business expenses or receipts and the implication of these questions there would be something wrong with them is entirely improper and contrary to the law.

The Court: Objection overruled. That is practically the same ground as the other objections.

Mr. Avakian: Further elaboration of the two, your Honor.

Mr. Thompson: Would you like the question read, Mr. Semenza?

A. It is a question whether I found anything in the books and [2795] records evidencing that liability. I did not.

Q. I also refer, Mr. Semenza, to your Item 25 on Exhibit M-1, due to William J. Graham, showing an obligation at December 31, 1946, of ten thou-

(Testimony of Lawrence J. Semenza.)

sand dollars. Is that not identical with Item 31 on government's Exhibit 183? A. It is.

Q. And upon what evidence and exhibits do you rely in support of that entry?

A. Mr. Graham's testimony.

Q. And he also produced a check, did he not?

A. He also produced a check, I believe, when he was recalled.

Q. And if you eliminated Mr. Graham's testimony and the check he produced from the record and exhibits and papers and documents in this case, do you find any other entry or record relating to that obligation?

Mr. Avakian: Objected to on the grounds previously stated in regard to all these private transactions. They are non-business in nature.

The Court: Objection overruled.

A. I found none.

Q. I believe, Mr. Semenza, that that covers the items on Exhibit M-1 in which you agree to the decimal point with the same entries made on government's Exhibit 183. Do you know of any others?

Mr. Avakian: Your Honor, if I may call attention to one [2796] other, Item 27 on Exhibit M-1 is the same as Item 33 on government's Exhibit 183, as of the year 1946, although it is different as of the year 1945.

Mr. Thompson: That makes a difference to me, Mr. Avakian.

Mr. Avakian: I didn't know whether you overlooked it or not.

(Testimony of Lawrence J. Semenza.)

Mr. Thompson: Thank you.

A. I believe that is all, Mr. Thompson.

Q. Now let us investigate the differences between Exhibit M-1 and government's Exhibit 183. The first item I find is your Item No. 5, under the heading "Assets" on Exhibit M-1, due from Mayris Chaney \$2,500 as of December 31, 1943. Is there any comparable entry on government's Exhibit 183?

A. There is not.

Q. Upon what testimony or evidence do you base the entry, Item No. 5, on Exhibit M-1?

A. The testimony of Mayris Chaney Martin.

Q. And that was to the effect that she had borrowed \$2,500 in cash from Elmer Remmer in August or September of 1943 and had repaid none of it by December 31, 1943, is that correct?

A. That is correct.

Q. Do you know the source of the cash which Mr. Remmer loaned to Mayris Chaney at that time?

A. I do not.

Q. During the year 1943 Cal-Neva was operating, was it not? [2797]

A. I don't know whether it was or not. I was not here at the time.

Q. You do recall the testimony of Mayris Chaney that the \$2,500 loan was made at Cal-Neva?

A. Yes, I do. It probably was operating that year.

Q. And is it not true that Mr. Elmer Remmer was the sole active manager of Cal-Neva, Inc., in

(Testimony of Lawrence J. Semenza.)

its operations say during the years of 1940 to 1946?

Mr. Avakian: Objected to, your Honor, as being incompetent, irrelevant and immaterial, having no connection, no materiality and no relevancy to the particular subject of inquiry at this time, re the loan to Mayris Chaney.

The Court: Objection overruled.

A. I presume he was the general manager. I do not know in the years 1942 to 1945 because I was not here. There is evidence in 1946 that James Jeffress had quite a bit of authority, as he took up most matters with me regarding the operation and financial activities of the company.

Q. And did it not occur, in the operation of Cal-Neva Lodge, that Mr. Remmer would withdraw cash funds from the corporation, of which no record was made and which you had to charge back against him at the end of the year, in order to balance the books?

Mr. Avakian: Object to that as being speculative, calling for conclusion and opinion and hearsay of the witness, unless [2798] the question is limited to the years with which the witness had personal familiarity and I call attention to his testimony a moment ago that he did not have personal knowledge as the years he was in the navy, 1942 to 1945.

The Court: Objection overruled. You may answer the question.

A. Well, no evidence of any record of with-



(Testimony of Lawrence J. Semenza.)

drawals were brought into our office, so we proceeded on the other basis in closing the records at the end of the fiscal years.

Q. And to what do you refer by other basis?

A. Of charging him with all cash that was unaccounted for during the season.

Q. I believe the next item as to which there is a difference between Exhibit M-1 and government's Exhibit 183, is Item No. 7 on Exhibit M-1, "Equity in B. & R. Smoke Shoppe." The same subject matter is dealt with, is it not, Mr. Semenza, in Item 2 on government's Exhibit 183? A. It is.

Q. And as Schedule 1, page 4 of Exhibit M-1, you have set up a statement of computing the net worth of the B. & R. Smoke Shoppe as you view the evidence, is that correct? A. I have.

Q. Mr. Semenza, I would like to hand you plaintiff's Exhibit 169. That represents, does it not, a statement of net worth of the B. & R. Smoke Shoppe prepared by a government [2799] accountant? A. It does.

Q. And it covers the same subject matter as page 4 of your Exhibit M-1? A. It does.

Q. Now the principal difference between page 4 of Exhibit M-1 and Exhibit 169 is the fact that the government, on Exhibit 169, included as a bank roll the sum of 15 thousand dollars at December 31, 1943, and December 31, 1944, and the sum of 20 thousand dollars as a bank roll at December 31, 1945, and December 31, 1946, whereas the only bank roll item that you included on page 4 of Exhibit

(Testimony of Lawrence J. Semenza.)

M-1 is five thousand dollars at December 31, 1945, is that correct?      A. That is correct.

Q. Is it your inference and conclusion, from the evidence, that the B. & R. Smoke Shoppe operated without any bank roll at the end of 1943 and end of 1944?      A. Not necessarily.

Q. You have also, have you not, Mr. Semenza, in the statement for the B. & R. Smoke Shoppe, page 4 of Exhibit M-1, set us as an asset of the B. & R. Smoke Shoppe office improvements, fixtures and equipment in amount of \$7,489.76 at December 31, 1945, and \$8,600.20 at December 31, 1946?

A. I have.

Q. And you have set up as a liability of the B. & R. Smoke Shoppe to the Menlo Club the sum of \$7,489.76 at the end of [2800] 1945 and the sum of \$8,600.20 at the end of 1946?      A. I have.

Q. These same identical items have been set up as the personal assets and personal liabilities of Elmer Remmer on government's Exhibit 183, the assets being shown under Item 22, 50-52 Mason Street Office, and the liabilities under Item 26, due to Menlo Club from Mason Street office, is that not correct?      A. That is correct.

Q. And the identical amounts have been used in each exhibit, the only difference being that you have concluded that this furniture, office improvements, fixtures and equipment, were assets of the B. & R. Smoke Shoppe rather than personal assets of Elmer Remmer?

A. Well, from the testimony of Mr. Maundrell,

(Testimony of Lawrence J. Semenza.)

the fact that the office was at 50-52 Mason, the improvements could have been even for the Menlo Club, if they considered it the Menlo Club office; then they wouldn't have been in the B. & R. Smoke Shoppe. It would appear from the testimony of Mr. Maundrell when he said it was for 50 Mason Street, possibly it would be an amount paid out for 50 Mason Street, and I assume 50 Mason is the B. & R. Smoke Shoppe.

Q. Well, at the time you reached the conclusion that the improvements to the office at 50-52 Mason Street and the fixtures and equipment in amount of approximately \$7,500 in 1945 [2801] and an additional amount of some \$1,100 in 1946, applied to the B. & R. Smoke Shoppe, did you have in mind Mr. Maundrell's testimony to the effect that that office was used not only for the B. & R. Smoke Shoppe, but for the Menlo Club, the 110 Eddy bar, the Day-Night Cigar Store and the 186 Club, and that it was operated in connection with a warehouse where considerable quantity of liquor was stored?

A. I did have it in mind.

Q. You had it in mind?

A. And I would have had to ask Mr. Maundrell how it should be handled, because it might have been allocated over all the enterprises.

Q. Mr. Semenza, at the time you reached the conclusion that the improvements, furniture and equipment in 50-52 Mason Street office was assets of the B. R. Smoke Shoppe, rather than the assets of Elmer Remmer personally, did you have in mind

(Testimony of Lawrence J. Semenza.)

government's Exhibit 24 and that part of it which is a signature card for a bank account of the Crocker First National Bank, San Francisco, in the name of E. F. Remmer or A. F. Pritchett, and the notations on the back of the card: "Business, liquor warehouse, 52 Mason Street, joint business address; W. E. Kyne, introduction address A. F. Pritchett, 56 Mason Street S. E., deposit \$700, opened by V. M. Alvord," did you have that in mind at the time you reached that conclusion? [2802]

A. Yes, I was aware of that. There are a number of factors here which might cause another accountant to allocate it to different places. There were a number of partners involved here also.

Q. As a matter of fact, there were different partners or associates for most of the enterprises here involved, is that correct?

A. That is correct.

• Q. And at the time you reached that conclusion, Mr. Semenza, that these improvements to 50-52 Mason Street office and the furniture and equipment were the assets of the B. & R. Smoke Shoppe, did you have in mind plaintiff's Exhibit 123? I will read it to you and then show it to you: (Reads Exhibit 123,)

A. Yes, I had it in mind.

Q. Mr. Semenza, the net result of the changes you made in your treatment of the B. & R. Smoke Shoppe on Exhibit M-1 as compared to the government's treatment on Exhibit 183, is that you reduced the net worth attributable to Elmer Remmer as shown on government's Exhibit 183 at December

(Testimony of Lawrence J. Semenza.)

31 1943, from \$18,413.38 to \$1,706.69, as shown on Exhibit M-1, is that correct?

A. That is correct.

Q. And when you refer to the year 1944, you reduced the net worth from that business from \$18,231.47, as shown on government's [2803] Exhibit 183, to \$1,817.61, as shown on Exhibit M-1?

Mr. Avakian: Objected to as statement contrary to the evidence, perhaps inadvertently. Mr. Thompson referred to a reduction in net worth of the business, whereas the figure that he read from Mr. Semenza's exhibit is not net worth of the business, but rather Mr. Remmer's 50 per cent equity in the business.

Mr. Thompson: I intended to state, your Honor, he reduced the amount of asset attributable to Mr. Remmer from the amount stated.

A. That is true.

Q. And with reference to the year-end 1945, your treatment has resulted in a reduction of the worth of the asset attributable to Mr. and Mrs. Remmer from \$23,344.66 to \$4,165.71?

A. That is true.

Q. And as of December 31, 1946, your treatment has resulted in a reduction of that asset from \$23,293.39 to \$1,216.58?

A. That is correct.

Q. Now with reference to the B. & R. Smoke Shoppe, Mr. Semenza, and the schedule you prepared on page 4 of Exhibit M-1, in allocating the net worth of the business among various people, you have assigned 50 per cent of the value of that

(Testimony of Lawrence J. Semenza.)

business to Mr. Remmer, 25 per cent of the value of the business to Mr. Kyne and 25 per cent of the value of the business to Mr. Lando, is that [2804] correct?      A. That<sup>†</sup> is correct.

Q. And you have set forth partners' capital accounts at the bottom of page 4?      A. Yes.

Q. Have you included in the capital account for Elmer F. Remmer any amount for the investment he made in purchasing the business?

A. I gave effect to this in this manner, Mr. Thompson—it was the testimony of Mr. Lando and Mr. Kyne that Mr. Remmer was to have his investment returned to him before they were to draw from the business. From examination of the 1942 and 1943 returns of the B. & R. Smoke Shoppe, it appeared sufficient profit had been made to return Mr. Remmer's investment to him. Therefore, I concluded that he had received his original investment back and that Mr. Lando also testified to the fact that they settled their markers between them at the end of the year, and I concluded that at that time they withdrew everything from the business but their bank roll.

Q. How much did they leave in for the bank roll?

A. I was unable to determine from the testimony any amount.

Q. Well, as a matter of fact, Mr. Semenza, were you able to determine from the testimony that Mr. Remmer had actually withdrawn any specific

(Testimony of Lawrence J. Semenza.)

amount at any time from the B. & R. Smoke Shoppe?

A. No, I was not able to determine a specific amount. [2805]

Q. You merely assumed that because the income tax return showed that the business earned a certain amount of money during the years 1942 and 1943 that that money was actually withdrawn by Mr. Remmer rather than by Mr. Lando or Mr. Kyne?

Mr. Avakian: Objected to as asked and answered and argumentative.

The Court: Objection overruled.

A. Mr. Lando indicated that Mr. Remmer was to have his investment back before they were to draw anything and I then took the position that they would have proceeded on that basis. They may have proceeded on another basis, I don't know.

Q. As a matter of fact, there are no books or records here available to show what basis they proceeded on? A. There are none.

Q. And are there any books or records here in evidence which set up partners' capital accounts for the B. & R. Smoke Shoppe?

A. There are not.

Mr. Avakian: Objected to for the reason that the evidence factually shows that the prosecution has not produced all the books and records in its possession.

The Court: Objection overruled. You may answer the question. [2806]

A. I have already answered.

The Court: The answer will stand. We will take our recess now.

(Jury and alternate jurors admonished and recess taken at 11:45 a.m.)

February 12, 1952—2:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. SEMENZA

resumes the witness stand on further

Cross-Examination

By Mr. Thompson:

Q. Mr. Semenza, I would like to hand you government's Exhibits 111, 111A, 111B and 111C, which are daily reminders of the B. & R. Smoke Shoppe, and also government's Exhibit 157, which is a transcript taken from a daily reminder for the B. & R. Smoke Shoppe for the year 1944 which has been lost. Are those the records upon which you relied in setting up the income and expenses of the B. & R. Smoke Shoppe for the years in question?

A. Yes, sir, and the tax returns for the year 1946.

Q. Would you like that return also? Is Exhibit 59 the return you have in mind? A. Yes, sir.

Q. Now, Mr. Semenza, the B. & R. Smoke Shoppe books which you have before you, 111 series of exhibits and Exhibit 157, [2807] are the only



(Testimony of Lawrence J. Semenza.)

books or records of the B. & R. Smoke Shoppe as such which are available in evidence, is that correct?      A. They are.

Q. And those records consist, do they not, of the single entry each day, either win or lose?

A. That is correct, except for the last year, I believe, for 1946, they show the gross play pay-out, net win or lose.

Q. From that record, Mr. Semenza, can you properly, as an accountant, in accordance with good accounting practice, determine the net income of the B. & R. Smoke Shoppe for the years in question?

A. If the income shown in 1944 is correctly recorded, you could.

Q. That is the only year as to which you have any question?

A. There is no record for 1945 so I am not in a position to make any statement as to it.

Q. Is it possible from those records, Mr. Semenza, to determine the gross receipts of the B. & R. Smoke Shoppe?

A. Only in those instances where they have reflected them in the records. However, if the net win or loss was correct, it wouldn't make any difference.

Q. If it is correct?      A. That's right.

Q. And is there any way you, as an accountant, bearing in mind the testimony of Mr. Kyne that all disbursements were made out [2808] of the funds on hand before the net figures were recorded, is there any way you can determine whether such

(Testimony of Lawrence J. Semenza.)

disbursements were deductible expenses or otherwise?      A. There wouldn't be.

Q. And there is no way from the records that you have before you?      A. No.

Q. Also bearing in mind, Mr. Semenza, the testimony of Mr. Lando, to the effect, and also I believe Mr. Kyne, that he, Mr. Kyne and Mr. Remmer withdrew money from time to time from the funds on hand and deposited markers, and not having any of the markers available, is it possible to determine how much, if anything, each of those persons withdrew?      A. No, it is not.

Q. Now on your Exhibit M-1, page 4, you set up some accounts which you designate "Partners' Capital Accounts," and we have reference to the fact that you have not shown in Mr. Remmer's capital account a credit for his original investment in the B. & R. Smoke Shoppe.

Mr. Avakian: Objected to as an incorrect statement of his testimony. He testified in computing the capital accounts he gave credit for the original investment and made adjustments with respect to it, as he fully explained this morning. The question assumes a factual premise contrary to the witness' testimony this morning. [2809]

The Court: Let me have the question.

(Question read.)

The Court: The question is a little difficult.

Mr. Thompson: I will reframe it.

Q. In your schedule designated "Partners'

(Testimony of Lawrence J. Semenza.)

Capital Accounts," to which I refer, Mr. Semenza, have you credited Mr. Remmer with his original investment in the B. & R. Smoke Shoppe?

A. I took it in consideration in arriving at this partners' capital account.

Q. And you explained, I believe, the way you took it into consideration is that you assumed that he had been repaid the amount of his capital investment in the years' operations preceding December 31, 1943, is that correct?

A. Based on the testimony of Mr. Kyne and Mr. Lando that Mr. Remmer was to receive his investment back first and that they settled up on the markers at the end of each year, I gave effect to the fact that Mr. Remmer was probably paid back for his original investment.

Q. In view of Mr. Kyne's and Mr. Lando's testimony, is it not a fact that Mr. Remmer originally invested ten thousand dollars in the B. & R. Smoke Shoppe, consisting of a payment of \$2,500 for the business itself and a contribution of \$7,500 for the bank roll?

A. That is correct.

Q. And is there any record whatsoever in the records here in [2810] court showing that Mr. Remmer had at any time been repaid that investment?

Mr. Avakian: Objected to, first of all the matter has been covered both before the noon recess and since, and secondly, it is immaterial, because every witness on the stand has testified that the amount of drawings of a partner is immaterial in determining the amount of the partnership profit on

(Testimony of Lawrence J. Semenza.)

which he pays taxes. It is the share of profit and not the amount of drawing that determines the tax, so aside from the fact that it has been fully covered, we make the objection it is immaterial.

The Court: Objection overruled.

(Question read.)

A. I think that is immaterial.

Mr. Thompson: That is not responsive.

The Court: Will you answer the question, please?

A. No, there is not.

Q. And in the event Mr. Remmer had not been repaid his original capital investment of ten thousand dollars, it would be proper accounting practice, would it not, Mr. Semenza, to include that ten thousand dollars as a credit in his capital account?

A. That is correct.

Q. And if that should be included as a credit in his capital account, the entry that you have on your Exhibit M-1 under [2811] 7, "Equity in B. & R. Smoke Shoppe at December 31, 1943," for example would be \$11,706.69 instead of \$1,706.69?

A. You are assuming also that there must be an increase in the assets in order to offset that.

Q. In the event that there are no books and records showing what the assets are and no books and records showing that the amount of the original investment, which has been proved, has been withdrawn, it would be proper, would it not, to conclude that that asset remained?

(Testimony of Lawrence J. Semenza.)

Mr. Avakian: Objected to as incomprehensive. I can't understand how there can be any asset there if the books did not show any asset. I don't know what counsel is driving at, but it seems apparent to me you can't set up an asset value of a partner if you assume in the question that the books show no asset.

Mr. Thompson: I refer to the books in evidence, your Honor.

The Court: Well, objection is overruled. Answer the question.

A. Well, I can't set up an asset unless I saw evidence of it.

Q. There are assets which you have shown as of December 31, 1943, for the B. & R. Smoke Shoppe of \$3,413.38, are there not? A. There are.

Q. And in making that computation you have not included any bank roll whatsoever? [2812]

A. That is correct.

Q. So at least to the extent of \$3,413.38, on your own figures, there are sufficient assets available, or were, as of December 31, 1943, to offset a portion of any such capital investment that may have been established? A. That is true.

Q. Mr. Semenza, on item No. 8, page 2 of Exhibit M-1, you have set up as an asset of Mr. Remmer's an equity in the Day-Night Cigar Store, is that correct? A. That's correct.

Q. And you have supported that by several schedules, designated schedule 2 and contained on pages 5, 6, 7 and 8 of Exhibit M-1?

(Testimony of Lawrence J. Semenza.)

A. That is correct.

Q. I wish to hand you, Mr. Semenza, Exhibit 164. I also hand you Exhibit 183, which is the replica of the chart marked Exhibit 183. Do you recognize Exhibit 164, Mr. Semenza, as the breakdown made by Agent Morgan in support of the government's computation of Mr. Remmer's net worth in the Day-Night Cigar Store, as set forth as Item 7 on government's Exhibit 183?

A. I do.

Q. Now the first place where you differ from Revenue Agent Morgan in your computation of the net worth of the Day-Night Cigar Store, relates to the item of Accounts Receivable, 186 [2813] Club, does it not, for the years 1943 and 1944?

A. It does.

Q. And do you find that on your balance sheet, page 5 on Exhibit M-1 for the Day-Night Cigar Store for the year ending December 31, 1943, you show that there was no account receivable to the Day-Night Cigar Store from the 186 Club.

A. That is correct, because in 1945 the amount due from the 186 Club was charged to Mr. Remmer's drawing account, so on page 6 the Day-Night Cigar Store I show that amount charged to the 186 Club as a drawing of Mr. Remmer's. Page 6 of Exhibit M-1, schedule No. 2.

Q. What is that amount, Mr. Semenza?

A. \$4,878.58, which is the amount shown on Exhibit 164.

(Testimony of Lawrence J. Semenza.)

Q. Is that taken from Exhibit 119, the ledger account of the Day-Night Cigar Store?

A. Yes, it is.

Q. Do you find in Exhibit 119 a record of accounts receivable? A. I do.

Q. What page is that on? Are the pages numbered?

A. They are not numbered. Under the heading "Assets," it is about the 9th or 10th account of the section "Assets."

Q. Does that ledger account, accounts receivable, show a balance due the 186 Club?

A. It does.

Q. As of December 31, 1943? [2814]

A. That is right.

Q. In what amount? A. \$4,878.58.

Q. Now also in reference to the year ending December 31, 1944, your page 5, schedule No. 2 of Exhibit M-1, which is the breakdown of the Day-Night Cigar Store, shows no account receivable from the 186 Club, is that correct?

A. It shows that amount due from the 186 Club.

Q. For the year ending December 31, 1944?

A. Yes.

Q. I show you statement—

A. Oh, I beg your pardon—no, it does not.

Q. And Exhibit 164, which is the statement prepared by Revenue Agent Morgan, does show an amount of \$9,538.04 as an account receivable at that time, is that correct? A. It does.

Q. And do you find such an entry in the ledger

(Testimony of Lawrence J. Semenza.)

account, Exhibit 119, as an account receivable?

A. Yes, I do.

Q. With further reference, Mr. Semenza, to page 5 of Exhibit M-1, under the heading "Equipment," you have shown a value at each year end for the years 1943, 1944, 1945 and 1946 of \$10,400 for equipment of the Day-Night Cigar Store, is that correct?

A. That is correct. [2815]

Q. And from what record in evidence did you obtain that figure as to each of those year ends?

A. Exhibit 117 and the next exhibit for the Day-Night—it may be 118, the records for the year 1946.

Q. I hand you Exhibit 117B, Mr. Semenza, is that the record you have in mind?

A. I think so. The last page in the book, "Furniture, Fixtures, Equipment and Buildings," under date January 1, 1946, debit \$10,400, balance \$10,400.

Q. And is there any inventory or equipment figure under date as of December 31, 1946?

A. There is not.

Q. And is it not a fact that the tax returns filed for the Day-Night Cigar Store for the year 1946 showed an inventory at the end of that year of \$2,100?

Mr. Avakian: I am not sure that is correct, your Honor. My recollection is that it shows equipment of \$2,100 rather than inventory.

Mr. Thompson: I refer to equipment; I am sorry.

A. That is correct. However, there is no indication in the records that there has been any change



(Testimony of Lawrence J. Semenza.)

in the furniture and fixture account in the year 1946.

Q. Because there was no indication in the record, you carried the figure through for a full year period, is that correct?

A. Yes, you would. [2816]

Q. Now, Mr. Semenza, I do not know whether you have all the books before you that you need, but if you need more say so—I want to refer now to page 6 of your Exhibit M-1, which relates to the Day-Night Cigar Store and is headed, "Partners' Capital Accounts," and I direct your attention to the account of Elmer Remmer as set forth on that exhibit, balance December 31, 1943, \$15,705.00. How was that figure arrived at?

A. That was taken from general ledger of the Day-Night, Exhibit 117.

Q. Do you have that?

A. It is entitled, "M. E. Kyne Investment Account."

Q. In making the computation of Mr. Remmer's capital account, Mr. Semenza, did you have in mind the testimony of Mr. Silverman and Mr. Kyne to the effect that Mr. Remmer had paid \$16,000 for the 186 Club and Day-Night Cigar Store and \$6,067 for the inventory, furniture and fixtures of the Day-Night Cigar Store?

Mr. Avakian: That is objected to as assuming facts contrary to the evidence, because the testimony of Mr. Kyne was that the \$16,000 was provided not by Mr. Remmer, but by Mr. Kopstake

(Testimony of Lawrence J. Semenza.)

and Mr. Nealis and subsequently reimbursed to Mr. Kopstake and Mr. Nealis out of the profits of the business, and it was only \$6,000 paid for the inventory of the Day-Night Cigar Store that was put up by Mr. Remmer.

Mr. Thompson: I believe that is correct statement of [2817] the testimony, your Honor. What I had in mind with reference to the Day-Night Cigar Store was the opening credit entry of \$10,400 on ledger sheet 1943, as shown on Exhibit 117, and the testimony the witness has referred to, to the effect that \$6,067 was paid for equipment and merchandise of the Day-Night Cigar Store, is that correct?      A. That is correct.

Q. And by reference to the books and records of the Day-Night Cigar Store can you account for the difference in that opening credit of \$10,400 as related to the testimony of what the business and inventory of the Day-Night Cigar Store actually cost?

A. Well, I used the records, 117, the journal and the cash receipts for its return. The first journal entry is December 1943, setting up \$10,400.

Q. Is there any supporting information for that journal entry?      A. No, there is not.

Q. Again referring to page 6 of your Exhibit M-1 and the capital accounts there set up, will you state what capital accounts are shown in the books and records of the Day-Night Cigar Store?

A. Wm. E. Kyne Investment account; Wm. E.

(Testimony of Lawrence J. Semenza.)

Kyne personal account, Sylvan Lando and E. Remmer.

Q. I note that you have placed a footnote on page 6 of Exhibit [2818] M-1 as follows: "In view of Kyne's testimony that Remmer provided the capital, the Wm. E. Kyne Investment Account has been included in the Remmer capital account." Is that the way you treated it?

A. That is correct.

Q. Now without the aid of the testimony of Mr. William Kyne, the government witness, and solely by reference to the books and records of the Day-Night Cigar Store, would you be able to determine the true ownership of the credits set forth in the Wm. E. Kyne Investment account?

Mr. Avakian: Objected to as assuming facts contrary to the evidence, as inviting speculation, and on the ground there is no foundation laid, particularly in view of the common knowledge we all have that accounting procedure calls for making inquiry of the individual connected with the business in analyzing the records, so it would be completely immaterial unless Mr. Thompson could first establish as a foundation that it would be proper accounting procedure to ignore the testimony of the partners.

The Court: Objection overruled.

A. I would have to have additional information, which is not in evidence here, as all the records relating to these transactions are not in evidence.

Q. Well then I believe your testimony is you

(Testimony of Lawrence J. Semenza.)

found no records in evidence to determine to your satisfaction the [2819] income of the Day-Night Cigar Store?

A. To my satisfaction from the evidence here in the case.

Q. I am referring to the books and records of the Day-Night Cigar Store.

A. Well, these are not complete, Mr. Thompson. All the records are not in evidence here in this court.

Q. And your computation was made solely from the records that are in evidence?

A. The records and the evidence here.

Q. And you testified, I believe, that in your opinion the books and records maintained by the Day-Night Cigar Store are sufficient and satisfactory, is that correct?

A. Along with the testimony of the witnesses.

Q. Without the assistance of the testimony of the witnesses are they satisfactory?

Mr. Avakian: For what purpose? The question is so general. For determining the income of the business?

The Court: Let us see if the witness understands the question.

Q. Do you understand?

A. Are you asking me sufficient to determine capital accounts of the partners?

Q. I am asking you whether the books and records in evidence, upon which you relied, without the aid of the testimony of any witnesses, are suffi-

(Testimony of Lawrence J. Semenza.)

cient to enable you to make up the [2820] computations which you made up in Exhibit M-1?

A. I could make up a statement of profit and loss for those years from the records.

Q. Could you make up a balance sheet for the years?

A. Yes, except for the capital accounts.

Q. And with reference to the capital accounts, you could not make up such a balance sheet?

A. I could not allocate between the partners if the testimony was missing.

Q. And you would not know, would you, Mr. Semenza, that the entries in the Wm. E. Kyne Investment account should be attributed to Mr. E. Remmer, who also had a capital account in those books?

A. Well, that applies to any account in these books. If you don't have additional information of the records in the business.

Q. The additional information upon which you rely, Mr. Semenza, in determining that the Wm. E. Kyne Investment account should be included in the Remmer capital account, is the testimony of Mr. Kyne, is it not, and not a record?

A. That is correct.

Q. Now in addition, in making the Day-Night Cigar Store computation, you made up profit and loss statements, is that correct?

A. I did. [2821]

Q. For what years?

A. For the year '45 and the year '46.

(Testimony of Lawrence J. Semenza.)

Q. And you did not make a profit and loss statement and include it in Exhibit M-1 for the year 1944? A. I did not.

Q. Why not?

A. Because the records had already been closed and profit for that year had been reflected in the books.

Q. For the years 1945 and 1946 the entries had not been made in the books and you had to post the books in order to make up a profit and loss statement?

A. I had to post the general ledger accounts.

Q. Are any of the 186 Club operations included in the schedules you have compiled for the Day-Night Cigar Store?

A. They show amounts advanced to and from the 186 Club in the balance sheet of December 31, 1945, and '46.

Q. With that exception none of the other operations of the 186 Club are included in your Day-Night Cigar Store computation?

A. From the records here I hadn't determined that.

Q. Your Item 9 in Exhibit M-1 is identified as "Equity in 110 Eddy Street," is that correct?

A. That is correct.

Q. And that refers to the same investment as Item 5 of government's Exhibit 183? [2822]

A. That is correct.

Q. The differences between your computation and that made by the government agent is quite in-

(Testimony of Lawrence J. Semenza.)

significant as to that business, is that true?

A. I don't understand.

Q. The differences between your computation and the computation made by the government agent, Mr. Harkness, are quite insignificant as to that business, so far as net worth of the business itself for the years in question are concerned?

A. The only difference is I treated it as a partnership and the revenue agents had taken all the net worth as belonging to Mr. Remmer.

Mr. Thompson: May I have the question?

(Question read.)

A. That is correct.

Q. In connection with the 110 Eddy Club, Mr. Semenza, you rely upon the books and records of the 110 Eddy Club for your computation?

A. I did, and the testimony in this case.

Q. I hand you Exhibit 112, I believe is the book record of the 110 Eddy Club. Are capital accounts set up in that book, Exhibit 112?

A. Yes, they are.

Q. In whose names?

A. Kyne, Cavani, Turner, Remmer, Kyne [2823] Trustee.

Q. And in your computation of the net worth of 110 Eddy Street enterprise, as shown on page 10 of your Exhibit M-1, you have included the Wm. Kyne Trustee account as part of Mr. Remmer's capital account, is that correct?

A. That is correct.

(Testimony of Lawrence J. Semenza.)

Q. By reference solely to the books and records of the 110 Eddy Street enterprise, are you able to determine that the Wm. Kyne Trustee account was actually Mr. Remmer's account and should have been included in his capital account?

Mr. Avakian: Objected to as contrary to the evidence, which contains testimony of the witness regarding it and calls for speculation and no foundation is laid to show that the procedure suggested in the question would be proper accounting procedure.

The Court: Objection overruled. Answer the question.

A. It is necessary for me to use Mr. Kyne's testimony along with the records for me to draw that conclusion.

Q. The schedule you have set up entitled "Partners' Capital Accounts" commences with a balance as of December 31, 1943, does it not?

A. That is correct.

Q. And as of that date have you set up any account for Mr. Arthur Pratt?      A. I have not.

Q. And at the time you set up the schedule No. 3 on page 10 [2824] of Exhibit M-1, did you have in mind the testimony of Mr. Arthur Pratt, regarding his investment in the 110 Eddy Street enterprise, and his testimony to the effect that in the spring of 1944 he received approximately \$6,800 for his investment and the testimony of Mr. Kyne that Mr. Remmer had paid Mr. Pratt for his investment?



(Testimony of Lawrence J. Semenza.)

Mr. Avakian: Objected to as a misstatement of the evidence. Mr. Pratt's testimony was in March of 1944 he received the sum, I believe, of \$4,400; approximately that amount, and that he was given credit in the amount of \$2,000 that he owed Mr. Remmer on account of money previously advanced to him, that the only amount of money that changed hands in 1944 was the figure of four thousand odd dollars; I believe it is 48 hundred.

Mr. Thompson: The total amount, as I recall, was \$6,800. I believe Mr. Avakian is correct in what he says, part of it is represented by loan which Mr. Remmer had previously made.

A. I was aware of Mr. Pratt's testimony and the records indicate \$3,400 was paid out of this business to Mr. Pratt.

Q. On what date?

The Court: We will take a recess for 15 minutes.

(Jury and alternate jurors admonished and recess taken at 3:00 o'clock.)

3:15 P.M.

(Defendant present with counsel.) [2825]

(Presence of the jury and alternate jurors stipulated.)

MR. SEMENZA

resumes the witness stand on further

Cross-Examination

By Mr. Thompson:

(Last question read.)

A. March 1, 1944.

Q. How was that payment, in what form? Does it show? A. Check.

Q. On what account?

A. I don't know, I would have to have——

Q. That is record of 110 bank account, you have to have it?

A. No, not record of 110 bank account, but it is general ledger. I would have to have disbursements ledger. It is probably Exhibit 112. There are two books under 112.

Q. I hand you Exhibit 112.

A. Check No. 532 under date of March 1, 1944, \$3400.

Q. And how was that charged on the books of 110 Eddy Street?

A. It was charged to Arthur R. Pratt.

Q. How was it credited?

A. It was credited to cash in that entry.

Q. And is there any entry in the book which

(Testimony of Lawrence J. Semenza.)

indicates whether it was just a payment of money out of the business or whether it was charged against the account of any individual person?

A. Well, ultimately it was charged to the account of Arthur R. Pratt, closed in profit and loss and following that it was [2826] closed into the Kyne Investment Account.

Q. And the Kyne Investment Account is the one that you have included in Mr. Elmer Remmer's capital account? A. That is correct.

Q. Is there any record in the books of 110 Eddy Street showing that Mr. Arthur R. Pratt, as of December 31, 1943, was a partner in that enterprise? A. No.

Q. And in your schedules setting up the capital accounts on pages 9 and 10 of Exhibit M-1, you did not include Arthur R. Pratt as a partner in the enterprise, is that correct?

A. I did indirectly by concluding, in view of the fact that payment of Arthur Pratt was charged to the Wm. E. Kyne account that the receipt of \$3400 for Mr. Pratt was probably included in that Kyne Investment Account. Mr. Pratt testified to the fact that he had paid that to Mr. Remmer at the time.

Q. At the time you failed to designate Mr. Arthur R. Pratt as a partner as of December 31, 1943, did you have in mind the evidence that Mr. Pratt and Mr. Remmer were the only persons who had made any investment in that business?

Mr. Avakian: That is an incorrect statement of

(Testimony of Lawrence J. Semenza.)

Mr. Semenza's testimony. Mr. Semenza testified he indirectly included Mr. Pratt's capital account by reason of the facts he explained and in making an incorrect statement of his [2827] testimony that Mr. Thompson just assumed in his question—

Q. In your designation of capital accounts on Exhibit M-1, pages 9 and 10, did you name Mr. Arthur Pratt as a partner at any point?

A. No, I did not name him, but I gave effect to his being in partnership through the Elmer F. Remmer account.

Q. In determining who were partners in the enterprise during the year 1943 and at the end of 1943, did you have in mind plaintiff's Exhibit 80, which is the partnership return of income for 1943, for the 110 Eddy Street and Schedule J thereon, showing names and addresses of each partner, W. E. Kyne, San Francisco, with the figure \$6,850.49, and Arthur R. Pratt, Portland, Oregon, \$3,425.24, and other partners named thereon?

A. I did in this way—Mr. Kyne further testified that anything in which he was interested, Mr. Remmer also had a half-interest. Consequently, in allocating the 1943 profit, I allocated one-third to Mr. Kyne and two-thirds to the Remmer account, giving effect to one-third being for Mr. Pratt.

Q. On the bottom of page 9 of Exhibit M-1, you have set up account for 110 Eddy Street, "Capital Accounts per books" and at the top of page 10 an account, "Capital Accounts as Adjusted." What adjustments were made by you in those accounts?

(Testimony of Lawrence J. Semenza.)

A. Just following "Capital Accounts as Adjusted" is analysis of the partners' capital accounts from December 31, 1943, thru [2828] December 31, 1946. It was necessary to allocate the 1942 profit and the 1943 profit, as the records had not allocated it at the end of 1943. So that the distribution of 1942 profit as shown and the distribution of 1943 profit as shown, I arrived at the balance after adjustments December 31, 1943, of \$3877.79 to Kyne, \$3121.74 for Cavani, \$910.51 for Turner, and \$28,956.18 for Mr. Remmer. I follow with the drawings of partners during 1944, and any capital contributions made by the partners in 1944 are credited and the profit of 1944 is allocated to the partners and I arrive at the balances in the partners' account of December 31, 1944, and show them in recap up above under "Capital Accounts as Adjusted December 31, 1944." Then I show the drawings during 1945 and distribution of 1945 profits and arrive at the balance of December 31, 1945, and show the balance of the various partners' accounts in the schedule above at December 31, 1945. Then from balance of December 31, 1945, I deducted 1946 drawings of partners and the 1946 losses, arriving at the capital accounts of December 31, 1946, as shown in the group in "Capital Accounts as Adjusted December 31, 1946."

Q. And the capital account you show for Mr. Remmer as of December 31, 1946, is \$24,820.33?

A. That is correct.

Q. Now, during the calendar years 1943, 1944,

(Testimony of Lawrence J. Semenza.)

1945 and 1946, in making your net worth computation, Exhibit M-1, page 2, [2829] which is the large chart, and determining Mr. Remmer's interest in 110 Eddy Street, you have considered the following partners, have you not: William E. Kyne, Frank Cavani, Turner and Elmer F. Remmer?

A. I have also given effect to Mr. Pratt.

Mr. Thompson: Yes, I understand from what you previously testified as to that.

Q. Those are the four persons you have considered partners in making your computations?

Mr. Avakian: Five, your Honor.

A. Five with Mr. Pratt.

The Court: What is the question now, four or five?

Mr. Thompson: Five; he includes Mr. Pratt.

Q. Mr. Pratt, according to your computations, Mr. Semenza, was in the picture only during the first few months of 1944, is that correct, and 1943?

A. 1943, according to Mr. Pratt's testimony.

Q. Up until March of 1944?

A. That is correct.

Q. After that he was out and all of his investment was attributed to Mr. Remmer?

A. That is correct.

Q. Now, in considering those four persons as partners, did you give effect to Government's Exhibit 153, which is headed, "Statement of William E. Kyne"? (Reads exhibit.) [2830]

A. I was aware of that statement.

(Testimony of Lawrence J. Semenza.)

Q. You were aware of the statement?

A. I was.

Q. Were you also aware, Mr. Semenza, of the testimony of Mr. Frank Cavani, to the effect that he was to pay \$16,000 for a one-fourth interest in 110 Eddy Street, and that that payment to Mr. Remmer was to be made out of his share of the profits?

Mr. Avakian: I think perhaps that is inadvertently misstated. I believe his testimony was 15 thousand dollars, but my objection is not based on that point, but rather on the point it is an incomplete and therefore misleading recital of Mr. Cavani's testimony. Mr. Cavani also testified that he was a partner and was to use his partnership share of the profits to pay for his interest in the assets of the business.

Mr. Thompson: I do not believe any one is bound by his characterization of what he calls himself in the business, your Honor.

The Court: You can take the matter up on re-direct.

Mr. Avakian: I think it is improper cross-examination and an incorrect recital of the testimony.

The Court: Objection overruled.

A. I do not think that has any bearing—

The Court: Your statement is correct, but I do not take it as an erroneous statement of the testimony. [2831]

Mr. Avakian: I believe that is the only testimony Mr. Cavani gave on that, your Honor.

(Testimony of Lawrence J. Semenza.)

The Court: Proceed.

A. I do not think that has bearing on Mr. Cavani's capital account here.

Q. Did you hear the testimony? A. I did.

Q. And in setting up Mr. Elmer F. Remmer's capital account in 110 Eddy Street, have you given any effect to that testimony?

A. No; no reason to.

Q. You understand, in view of Mr. Cavani's testimony, he could not, without Mr. Remmer's consent, withdraw any money from the 110 Eddy Street partnership?

Mr. Avakian: Just a moment—that is objected to as calling for legal interpretation of the testimony of another witness, based on opinion and conclusion of the witness, not a matter of accounting but a matter of law.

The Court: Let me have the question.

(Question read.)

The Court: Objection overruled. You may answer the question.

A. Even though partners had an agreement to that effect, they still might withdraw money. Mr. Cavani did have funds which he withdrew [2832] here.

Q. But with the exception of one withdrawal of \$1500 during those four years, the others were all for taxes, were they not, income taxes?

Mr. Avakian: Objected to as incompetent, irrelevant and immaterial, what the purpose was. The



(Testimony of Lawrence J. Semenza.)

important thing is money was withdrawn. It doesn't matter what Mr. Cavani used it for.

The Court: Objection overruled.

A. The records indicate outside the \$1500 that he withdrew it for the specific purpose of paying income taxes.

Q. And at the time the sum of \$1500 was withdrawn by Mr. Cavani, as shown by the books, does it not also appear that at the same time Mr. Turner withdrew \$1500 and Mr. Remmer withdrew \$3,000?

A. I don't recall. I recall that each of them drew—that Mr. Turner did draw \$1,500 and Mr. Remmer drew \$3,000. It may have been the same year and at the same time.

Q. I mean approximately the same time?

A. I believe so.

Q. And if the partnership agreement was that Mr. Cavani and Mr. Turner were to leave their share of the profits in 110 Eddy until Mr. Remmer had been paid the agreed-upon price for the interest in the business, would it not be proper accounting practice to show that that money credited to Mr. Cavani's partnership account was not subject to withdrawal by him? [2833]

Mr. Avakian: I don't understand the question at all.

The Court: Maybe the witness does.

Mr. Avakian: Yes, but I am entitled to understand it so I can state my objection. It is incomprehensible to me. It appears to me to call for a legal

(Testimony of Lawrence J. Semenza.)

conclusion but it is so confusing I can't understand it.

The Court: Read the question.

(Question read.)

A. I don't see any reason why it should be.

Q. Under that sort of an agreement, Mr. Semenza, would it be a proper accounting practice, in determining the net worth of Mr. Remmer at the time, to show the \$16,000 to be an account receivable to him from Mr. Cavani?

A. I do not think so.

Q. In other words, you just don't pay any attention to the \$16,000, as an accountant?

A. That's right.

Q. You also, Mr. Semenza, as part of your Exhibit M-1, have set up schedule No. 4, relating to the Menlo Club, is that correct? A. Yes, sir.

Q. And that schedule No. 4 and the information derived therefrom, is set up as Item No. 10 on Exhibit M-1, the large chart, and the same character of information is set up as Item 6 on Government's Exhibit 183, is that correct?

A. That is correct. [2834]

Q. I hand you Exhibit 165, Mr. Semenza. Exhibit 165 is the breakdown statement made by the agent Weaver, is it not, relating to the Menlo Club?

A. It is.

Q. And so far as the assets of the Menlo Club are concerned, both as to the year ends 1945 and

1946, your statement and Mr. Weaver's statement agree, is that correct? A. They do.

Q. You have, however, as a liability of the Menlo Club for the year ending December 31, 1945, set up an item of \$26,464.18, which was not included as a liability by Mr. Weaver in his statement, Exhibit 165? A. That is correct.

Q. And you have noted that item of \$26,464.18 as a liability for checks issued in January, 1946, which were entered in December, 1945, disbursements record? A. That is correct.

Q. In so entering the item of \$2,464.18, have you considered the Menlo Club to be on a cash or accrual basis?

A. I considered it to be on an accrual basis, based on the records maintained.

Q. And is it your understanding that under the Internal Revenue Code and regulations in effect at that time, it was up to the taxpayer to elect whether he should report on a cash or accrual basis? [2835]

A. It was.

Q. I draw your attention, Mr. Semenza, to Government's Exhibit 89, designated "Partnership Return of Income 1945 Menlo Club," signed Elmer F. Remmer, and to the question on the last sheet of the return, Question No. 4: "Check whether this return was prepared on cash or accrual basis." Will you state what was checked?

A. The return shows cash basis.

Q. Also in connection with the Menlo Club liabilities as shown on your Schedule No. 4, page 12 of your Exhibit M-1 for the year ending December 31,

(Testimony of Lawrence Semenza.)

1946, you have included a liability as \$17,264.58 for checks issued in January, 1947, which were entered in December, 1946, disbursement record, is that correct?      A. That is correct.

Q. And that liability was not included as a liability in the statement of the Menlo Club prepared by Mr. Weaver, which is Exhibit 165?

A. It was not. My reason for including it in there was the fact that the services and purchases were included in the income tax returns for 1946 and 1945, indicating that they wanted to be on an accrual basis.

Q. I would like to direct your attention, Mr. Semenza, to plaintiff's Exhibit 90, designated "Partnership Return of Income 1946 Menlo Club," and to the question section at the [2836] bottom of the third page of the printed form return and the question No. 5: "Check whether this return was prepared on cash or accrual basis." Will you state which is checked?

A. The return shows cash basis. However, the information is prepared on the accrual basis. It is true it has been prepared on the accrual basis.

Q. Do you have a general ledger of the Menlo Club for the year 1945?      A. I do not.

Q. And do you have an account set up in the books and records of the Menlo Club here in evidence showing accounts payable in the amount you have set forth on your Exhibit No. M-1, page 13, in amount of \$26,464.18 for the year ending December

(Testimony of Lawrence Semenza.)

31, 1945, and in the amount \$17,264.58 at December 31, 1946?

A. Cash disbursements record discloses these items listed in December. Checks issued in January, and you would have to give effect to that in preparing these statements.

Mr. Thompson: I would like to have the answer stricken and request the witness to answer the question.

Mr. Avakian: I think it is responsive.

(Question and answer read.)

The Court: The question may go out. Listen to the question.

(Question read.)

The Court: Answer yes or no. [2837]

A. No.

Mr. Golden: May he explain?

The Court: He did not ask to explain.

Mr. Golden: I am asking for him. He is a defense witness.

The Court: Very well. There is nothing before the Court.

Mr. Golden: May the witness explain his answer?

The Court: If he wants to, but he didn't ask to.

Mr. Golden: May we ask him if he wishes to?

The Court: You can do that when you have him on redirect examination if you want to.

Q. Also in the Menlo Club statement, Mr.

(Testimony of Lawrence Semenza.)

Semenza, you have made some adjustments for depreciation on your depreciation schedule which differ slightly from those set forth by Mr. Weaver in Exhibit 165?      A. I have.

Q. In addition, in connection with your computations with relation to the Menlo Club, you have set up accounts designated "Partners Capital Accounts" on page 13 and have made computations reconciling the cash disbursements by the Menlo Club for the years 1945 and 1946, is that correct?

A. I did.

Q. On page 14 of Schedule No. 4 of Exhibit M-1, which is headed "Computation of Revised Net Income and Determination of Cash Withdrawn from Business, year ending December 31, [2838] 1945," you show, do you not, that during that year Mr. Remmer withdrew cash to the amount of \$120,127.31, is that correct?      A. I do.

Q. I show you Exhibit 125, ledger entitled "Menlo Club," and Exhibit 129, entitled "Menlo Bar 1946." Are those the records that you had in mind in making that determination?

A. What determination?

Q. That Mr. Remmer withdrew cash from the Menlo Club business amounting to \$120,127.31 during the year 1945?

A. I think that is Exhibits 127, 128 and 126, probably.

Q. I will hand you Exhibits 127, 126 and 128.

A. I relied on these exhibits and the testimony of Mr. Kyne, to the effect that the funds from the

(Testimony of Lawrence Semenza.)

club operation went to the safe. Consequently, in determining what happened to the cash, all the information is in the records to determine what cash was handled through the Menlo Club, and his testimony that cash went to the box and came out of the box, I drew my conclusion that Mr. Remmer must have drawn the cash out if it went into the box and it was not all returned to the business, so the sum of \$120,127.31 is the amount of unaccounted-for cash, as shown by the information in the exhibits.

Q. You testified on direct examination, I believe, Mr. Semenza, that it was proper accounting practice to set up in a capital account for any alleged partner the amount of his [2839] capital investment in the enterprise, plus the amount of his distributive share of the profits for each year, is that correct?

Mr. Avakian: Objected to as not a correct statement of the evidence because his testimony was that that procedure should be done with respect to partners. He did not use the word "alleged" partners; that is in Mr. Thompson's question, but not in Mr. Semenza's testimony.

The Court: Let me have the question.

(Question read.)

The Court: That probably is right.

Mr. Thompson: For any partner in the enterprise, that is all right. I don't mind taking out "alleged."

A. In a partnership you credit the partner with his investment in the partnership and with his share of the profits yearly, less any drawings during

(Testimony of Lawrence Semenza.)

the year, or any additional amounts of investment of subsequent years, after the original.

Q. There is, is there not, in the Menlo Club records, a ledger sheet as to capital account of Elmer Remmer?      A. There is.

Q. And will you turn to it, please, and state what amounts of withdrawals from the Menlo Club are recorded on that capital account for the year 1945?

A. One thousand dollars is shown here. However, that might not include all the amounts that he withdrew during the year. [2840]

Q. Your answer is, I understand, that one thousand dollars is recorded as a withdrawal for 1945 on Mr. Remmer's account?

A. That is correct.

Q. For the year 1946, you made a computation, setting forth on page 15 of Exhibit M-1, the amount of cash withdrawn by Mr. Remmer from the Menlo Club for the year 1946, and arrive at a withdrawal of \$17,382.56, is that correct?

A. That is correct.

Q. Will you turn to Mr. Remmer's capital account in the Menlo Club books and state the amount of withdrawals made by Mr. Remmer during the year 1946, as shown by the books by that capital account?

A. There are a large number of them; three or four thousand dollars.

The Court: Well, we will take our recess now.

(Jury and alternate jurors admonished and recess taken at 4:00 o'clock.) [2841]



Wednesday, February 13, 1952—10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. SEMENZA

resumed the witness stand on further

Cross-Examination

By Mr. Thompson:

Q. Mr. Semenza, you have before you the Menlo Club books and records, Exhibits 125 to 129, inclusive? A. I have.

Q. And also defendant's Exhibit M-1, the statement you prepared? A. I have.

Q. And Government's Exhibits 165 and 183?

A. I have, Mr. Thompson.

Q. Now, in preparing your schedules for the Menlo Club, which consists of several pages, designated schedule No. 4 in Exhibit M-1, you have included in those schedules, have you not, the operations not only of the Menlo Club itself, but also of Tiny's Restaurant and the Menlo Bar?

Mr. Avakian: Objected to as assuming facts contrary to the evidence. The uncontradicted evidence is that the Menlo Club was one enterprise, one partnership, containing a card room, and bar and restaurant.

The Court: Counsel is merely inquiring of the witness if the schedules included— [2842]

Mr. Avakian: He said "did you not," which is a

(Testimony of Lawrence Semenza.)

purported recital of evidence and it is contrary to the uncontradicted evidence it is one enterprise, one partnership, all three companies contained in one unit.

The Court: Objection overruled.

(Question read.)

A. Yes, because the Menlo Club, according to my understanding, embraced the restaurant, bar and club room and the term "Menlo Club" is the term used for that partnership.

Q. Well, Mr. Weaver did the same thing in preparing his schedule 165, did he not?

A. He did, Mr. Thompson.

Q. As I recall, at the recess yesterday afternoon, we were referring to page 14 of schedule No. 4, Exhibit M-1, in which you had made a computation of cash withdrawn from the business, is that correct? A. Yes.

Q. The first item on that schedule, Mr. Semenza, reads: "Gross Income per Return and Amended Return Filed, \$266,164.50." Is the information that you have set forth therein supported by the books and records of the Menlo Club which you have before you? A. Yes, they are.

Q. And that amount of gross income was entered in the ledgers themselves? [2843]

A. For the year——

Q. That is for the year 1945.

A. For the year 1945, as I recall the testimony from the club operation, the records of the club

(Testimony of Lawrence Semenza.)

portion had been lost and they used a figure based on the 1944 operation of the predecessor proprietor.

Q. By the records which have been lost of the Menlo Club, you refer to the poker sheets of the card room operation, is that correct? A. I do.

Q. And so the only source you had available for that figure of \$266,164.50 was the Menlo Club partnership return of income for 1945, and the amended return? A. That is correct.

Q. Now the next item is "Expenses per Return as Amended, Excluding Depreciation and Amortization, \$141,182.14." What is the source of that figure?

A. That is from the tax return and from the exhibits.

Q. And is that figure supported by the books and records of the Menlo Club?

A. To the extent that the restaurant operation and the bar operation are recorded in these records.

Q. Are the club room operations for the year 1945 recorded in those records?

A. They are not. [2844]

Q. And the same estimate of expenses for the club room operation was made for the year 1945 in connection with expenses that was made in connection with gross income?

A. That is my understanding of the testimony.

Q. Your next item on that schedule is "Advance as Adjusted, \$5,951.53," is that taken from the books and records of the Menlo Club, Exhibits 125 to 129?

A. That is taken from my schedule page 13, "Reserve Depreciation."

(Testimony of Lawrence Semenza.)

Q. And what is the source of the information from which you compiled the schedule "Reserve for Depreciation," page 13 of Exhibit M-1?

A. The records here and Mr. Maundrell's testimony.

Q. Were the books and records themselves sufficient to support that figure of \$5,951.53 without the assistance of Mr. Maundrell's testimony?

A. Oh, they may possibly have been.

Q. The next item is "Amortization of Leasehold, \$6,666.67," what is the source of that figure on page 14 of Exhibit M-1?

A. Well, that is based on ten-year period of amortization, the same basis as Mr. Weaver used for the Menlo Club.

Q. Then you show a net income for the year as revised, \$112,364.16, that is just a mathematical computation, is it not?

A. That is the difference between gross income and the expenses. [2845]

Q. And you deduct from that salaries of partners, \$11,726.90, to what salaries do you refer?

A. There are salaries listed on the return that have been paid to the active partners in the businesses.

Q. And by active partners to whom do you refer, by name, do you recall?

A. Nelson and Maundrell, Ditto, Fricker, and Turner, I believe all had salaries.

Q. And are those salaries for the year 1945, re-

(Testimony of Lawrence Semenza.)

corded on the ledger accounts, books and records of the Menlo Club for that year?

A. It is my recollection they were.

Q. Now, you arrived at a net income to be allocated to partners, so designated, on page 14, \$100,-637.26 for the year 1945, is that correct?

A. Yes, sir.

Q. And you then made a computation of cash to be accounted for at December 31, 1945?

A. Yes, sir.

Q. And you first add back certain non-cash items included in your computation of net income as follows: depreciation, \$5,951.53; amortization of leasehold, \$6,666.67; deduction in inventory between May 1, 1945, and December 31, 1945, \$5,860.73; checks issued in January, 1946, recorded as December, 1945, disbursements paid, not shown as outstanding at December 31, 1945, [2846] \$26,464.18. You have a total of non-cash items of \$44,943.11, and adding that to the net profit you have computed, you arrive at a figure of \$145,580.37, is that correct?

A. That is correct.

Q. Now that figure, according to your computations, represents the amount of cash from the operations of the Menlo Club during the year 1945, which should be accounted for in the books and records of the Menlo Club, is that correct?

A. That is correct.

Q. Now you have found a record of the disbursement of a certain portion of that cash and have ac-

(Testimony of Lawrence J. Semenza.)

counted for it from the books and records of the club?      A. I have.

Q. And those items are as follows: petit cash office, \$800; bank roll, \$10,000; advance to 50 Mason Street, \$7,489.76; deposit Pacific Gas & Electric Company, \$1,030; deposit on lease, \$4,000; Neon sign, \$500; equipment, \$920; balance in Crocker National Bank, \$713.30; giving a total of \$25,453.06, is that correct?      A. That is correct.

Q. Now, with the exception of the petit cash fund of \$800 and the bank roll of \$10,000, those items of cash are accounted for by withdrawals by check from the account maintained at the Crocker National Bank in the name of Harold H. Maundrell, is that correct? [2847]

A. Petit cash fund and bank roll are evidenced by that, is that what you say?

Q. No, I say, with the exception of petit account and bank roll, the other items are evidenced by withdrawals by check from the bank account in the Crocker National Bank maintained in the name of Mr. Maundrell?

A. That is right, except for the balance in the Crocker National Bank, which is evidenced—

Q. By the bank statement itself?

A. That is correct.

Q. From the books and records of the Menlo Club, those items are the only items of cash withdrawal which you could account for, is that correct?

A. No, there are some other items indicated as drawn by Mr. Remmer.

(Testimony of Lawrence Semenza.)

Q. What are those items?

A. Twenty-five thousand dollars account Remmer, August 8, 1945.

Q. What is that item?

A. Payment to Gene Schriber, \$25,000.

Q. And did you mistakenly fail to include that in this schedule 4, page 14? A. No, I did not.

Q. Why did you not include it?

A. Because, I was determining the amount that Mr. Remmer withdrew from the business. There is \$120,127.31 would be included [2848] in that figure.

Q. And so you do have a record of one payment by the Menlo Club for the account of Mr. Remmer of \$25,000, is that correct?

A. Yes, sir, and I also have another one, November 26, check No. 1555, to Matte Silverman, \$6,000, charged to Mr. Remmer. I have another one here on the same date, No. 1570, the St. Francis Hotel for \$12.97.

Q. That is in 1945?

A. Yes, Mr. Thompson. Those payments, along with the testimony of the witness that cash went to Mr. Remmer's box, I charged him with the cash unaccountable, which included these items for which there were records.

Q. The total items for which there were records, as you have recited them, is \$31,012.97, is that correct? A. That is correct.

Q. So if you add that to the figure of \$25,453.06, which you included in your record of cash accounted for by the books on page 14 of Exhibit M-1, we

(Testimony of Lawrence Semenza.)

can determine the actual amount of cash expenditures accounted for by the books of the Menlo Club in 1945, is that correct?      A. That is correct.

Q. Have you made that computation?

A. It should be 57 thousand dollars, approximately.

Q. Would \$56,466.03 be correct?

A. Yes. [2849]

Q. So out of a total of \$145,580.37 cash which the books show to have been available in the operations of the Menlo Club for the year 1945, the books themselves account for expenditure of only \$56,466.03, is that correct?

Mr. Avakian: Just a moment—that is objected to, your Honor, as immaterial and as misleading in inference, because the testimony of every accountant in this case, including government accountants, is that in the taxation of partnership income the disbursements to the proprietors are immaterial. Net income of the partnership is computed not on the basis of withdrawals of the partners, but on the basis of receipts and expenses of the partnership and that the payment that is taxed to the partner is the percentage share of the profits and the amount he withdraws is immaterial, but simply is reflected in his capital account as being the remaining balance of his investment, so the question is immaterial, that being the uncontradicted testimony of the government accountants as well as Mr. Semenza.

The Court: Objection overruled. Answer the question.



(Testimony of Lawrence Semenza.)

(Question read.)

A. That is correct. However, I have accounted for all the cash.

Q. And you have accounted for that cash by assigning to Mr. Remmer the withdrawal of all unaccounted-for cash?

A. I have, because the other partners, there was no testimony [2850] from them that they withdrew any more from the Menlo Club than what is shown in their particular accounts and the testimony also indicates that cash went into Mr. Remmer's box, so he must be accountable for the difference.

Q. Isn't it true, Mr. Semenza, that the testimony shows that cash from the Menlo Club was kept either in the Menlo Club safe or in the safe at 50-52 Mason Street?

A. That is correct. If it went to 50 Mason Street, it went into Mr. Remmer's box, according to the testimony as I recall it.

Q. Because that was Mr. Remmer's office, is that correct?

A. That is right.

Q. That is his personal office? That was not the Menlo Club office?

A. Well, I don't know about that either, because there is indication that the Menlo office was at 50 Mason. The testimony shows that Mr. Remmer had a box in the safe.

Q. And the testimony also shows, does it not, that various of the enterprises had boxes in the safe?

A. That is correct.

(Testimony of Lawrence Semenza.)

Q. Now as far as you know, that unaccounted for cash is still in the safe, either at the Menlo Club or at 50 Mason Street? A. As far as I know.

Mr. Avakian: Objected to as speculative, calling for opinion and conclusion of the witness and so far as it relates [2851] to where that money is now in 1952, would be immaterial and incompetent.

The Court: Objection overruled. Answer the question.

A. Unless I counted the funds in the box, I would not know where it was.

Q. Do you or do you not know whether or not that cash is still in the box?

Mr. Avakian: Objected to as asked and answered.

The Court: Objection overruled.

A. I wouldn't know where it was.

Q. And do you or do you not know whether that cash still remains as an asset of the Menlo Club or as an asset of Mr. Elmer Remmer?

A. I have not examined any records subsequent to this year or to the evidence here in the case, so I wouldn't know.

Q. Well, do you know or do you not know whether it remained as an asset there of the Menlo Club or of Mr. Elmer Remmer at December 31, 1945? A. Not that I know of.

Q. You do not know, is that correct?

A. No.

Q. And that cash, so far as you know, still may have remained as an asset of the Menlo Club or Mr.

(Testimony of Lawrence Semenza.)

Elmer Remmer at December 31, 1946, is that correct?

Mr. Avakian: Objected—asked and answered at least three [2852] times, is repetitious. The witness has already said he doesn't know and the repeated asking of questions is improper and apparently simply for the purpose of trying to create some sort of inference through asking of the question.

The Court: Objection overruled. You may answer.

A. From the evidence here there is no indication that there was any cash in existence December 31, 1945, and that is why I charged it to Mr. Remmer as a drawing and have given no effect to it as an asset of his or of the Menlo Club.

Q. There is no record of whether or not cash was or was not in existence, is that what you mean?

A. There is evidence that some cash was in existence and there is no record of the amount.

Q. There isn't any record of how, when, or for what purpose any of that cash was disbursed?

A. Not that I know of.

Q. So the effect of your computation is that for the year 1945, you have assigned to Mr. Remmer, as a withdrawal from the Menlo Club, the sum of \$63,661.28, which is not accounted for in the books and records of the Menlo Club, is that correct?

A. That is correct. However, that has no effect on the income of the Menlo Club for the year.

Q. In your computation of Mr. Remmer's capital

(Testimony of Lawrence Semenza.)

account on page 13 of Exhibit M-1, you have entered the following items for the year 1945: Investment in assets acquired May 1, 1945, [2853] \$175,000; net profit for 1945 as revised, \$40,254.90; withdrawals in 1945, \$120,127.31; balance December 31, 1945, \$95,127.59, is that correct?

A. That is correct.

Q. And it is that figure of \$95,127.59 which you have transferred to page 2 of Exhibit M-1, which is the duplicate of the large chart before the jury under Item 10, December 31, 1945, \$95,127.59?

A. That is correct, Mr. Thompson.

Q. Mr. Semenza, if you add back to Mr. Remmer's capital account the sum of \$63,661.28, which you assume was withdrawn by him from the Menlo Club in 1945, what is the figure at which you arrive as his net worth in the Menlo Club at the end of that year?

A. Approximately 158 thousand dollars. I have done the same as Mr. Weaver except I have allocated the withdrawals and the profits for the year among the partners of the Menlo Club.

Mr. Thompson: I would like to ask the latter part be stricken. All I asked the witness to do is to make his computations.

The Court: It may go out.

Mr. Avakian: Your Honor, may we be heard?

The Court: No.

Mr. Avakian: We may not be heard, your Honor?

(Testimony of Lawrence Semenza.)

The Court: No, it is clearly not [2854] responsive.

Q. And your answer is that if you should add back into the capital account of Mr. Remmer, as of December 31, 1945, the sums of money which you have assumed were withdrawn by him, his capital interest in the Menlo Club as of that date would have been approximately \$160,000?

Mr. Avakian: That is objected to as the very same question just asked and answered.

The Court: Objection overruled.

A. It would be that sum. However, I would have to likewise add an asset of equal amount to my balance sheet.

Q. That's right; and that would be on the basis that the Menlo Club records and tax returns indicate that that amount of money had been acquired by the Menlo Club during the year 1945, and that there is no record of its disbursement?

A. That would be on the basis of the assumption that the cash is still present.

Q. And as I understand you, there is no record it is not still present?

A. There is no evidence that it is not present in the Menlo Club.

Q. Itself?

A. And I wouldn't know whether it was present any place else.

Q. The Menlo Club, during the year 1945, maintained a bank account, did it not, in the Crocker

(Testimony of Lawrence Semenza.)

National Bank in the name of Harold H. [2855]  
Maundrell? A. It did.

Q. And that was used for the operations of the Menlo Club, bar and restaurant and card room?

A. To some extent.

Q. Was it used exclusively for those operations?

A. I wouldn't know.

Q. Do you know whether or not all the cash receipts of the Menlo Club were deposited in that bank account?

A. I do not believe they were.

Q. You have made a similar computation and reconciliation of cash withdrawn for the year 1946, is that correct, and that is set forth on page 15 of your Menlo Club exhibit, schedule No. 4?

A. That is correct.

Q. Your first item is "Gross Income Per Return and Amended Return, \$369,781.85." What is the source of that figure?

A. The source of that figure is the records of the Menlo Club for the year 1946, and the tax return.

Q. And do the records of the Menlo Club for the year 1946 and the tax return for the year 1946, agree as to the gross income received in the operations during that year?

A. They do, as far as I was able to determine.

Q. And that was by reference to the ledgers that you have before you?

A. That is correct. [2856]

Q. The next item is "Expenses Per Return,

(Testimony of Lawrence J. Semenza.)

Excluding Depreciation and Amortization, \$274,225.28." What is the source of that figure?

A. The records of the Menlo Club and tax return.

Q. And the records of the club and tax return agree as to that figure? A. That is right.

Q. And the total of those expenses, \$274,225.28, were actually recorded in the books and records of the Menlo Club for 1946?

A. As far as I was able to determine.

Q. You did make an effort, as an accountant, to determine that? A. I did.

Q. Your next item is "Less Items of Repairs and Replacements Considered to be Capital Items rather than Expenses, \$2350.16." Is that item also taken from the books and records of the Menlo Club?

A. It was taken from testimony here of Mr. Maundrell and represents items capitalized shown in the balance sheet of the Menlo Club as capital improvement.

Q. You capitalized those items yourself in your own computation, is that correct?

A. Well, Mr. Weaver finds, and I had no difference of opinion with him on that, so I likewise did the same. [2857]

Q. You say you had no difference of opinion?

A. That's right.

Q. Were they capitalized on the books and records of the Menlo Club?

A. No, my examination indicated that they had

(Testimony of Lawrence Semenza.)

been taken as expenses. If I had had additional information, I might have taken a different position and included them in expenses.

Q. Now you have arrived at a net income, after deduction of partners' salaries, for the year 1946, of \$67,047.92? A. That is correct.

Q. And you could not make a computation of cash to be accounted for at December 31, 1946?

A. That is correct.

Q. And in the same way as you did for 1945, you added back certain non-cash items and arrived at a total of \$103,500.31 of cash to be accounted for in the operations of the Menlo Club for the year 1946? A. That is correct.

Q. You then account for certain of those items of cash as follows: Advance for 50 Mason Street, \$1,110.44; differences between inventories January 1, 1946, and December 31, 1946, \$3,201.32; increase in balance on deposit in Crocker National Bank during the year, \$1,956.06; improvements and replacements capitalized in 1946, \$2,355.16; deposit in Bank of America December 31, 1946, \$15,265.54. Then under the designation [2858] of "Partners' Drawings," you have the following items: Ditto, \$4,490.57; Nelson, \$3,378.29; Maundrell, \$3,997.80; Turner, \$2,130.33; Fricker, \$3,599.56; Kyne, \$16,005.50. You include donations of \$2160, increase in bank roll of \$3.00; checks paid in 1946 entered in 1945, \$26,464.18; then you arrive at a total of \$86,117.75, is that correct? A. That is correct.

Q. And that is the total amount of cash expendi-



(Testimony of Lawrence Semenza.)

tures accounted for by the books and records of the Menlo Club for the year 1946?

A. Well, that is the total amount of the 103 thousand that is accounted for.

Q. The 103 thousand is the amount of cash that they had available to spend that year, according to your computation?

A. Not necessarily. That is after payment of the operating expenses, purchase of food and so on.

Q. Now with reference to the partners' drawings which you have set forth for Mr. Ditto, Mr. Nelson, Mr. Maundrell, Mr. Turner, and Mr. Fricker, are they recorded in accounts designated as capital accounts for those persons? A. They are.

Q. And what do those withdrawals represent according to the books and records of the Menlo Club?

A. According to the books and records they represent federal income tax and California income tax. [2859]

Q. They all represent federal income and California income tax payments on behalf of those persons, is that not true? A. That is correct.

Q. And those payments, according to those books and records, were made not by check payable to the individual person himself, but by check payable to the respective collector, is that correct?

Mr. Avakian: Objected to as incompetent, irrelevant and immaterial; as long as they were paid for the accounts of Mr. Ditto, Mr. Maundrell, and so on, it doesn't matter how the check was issued payable. It was for their benefit.

(Testimony of Lawrence Semenza.)

The Court: Objection overruled. You may answer the question.

A. I don't know without looking it up.

Q. Will you check it, please?

A. There was reference here in the ledger accounts to certain checks dated that date, but I do not seem to locate them here at the moment.

Q. May I ask you this, Mr. Semenza—don't the entries in the ledger accounts indicate that the checks were made payable directly to the respective tax collector?

A. They do, but that is not an indication that it was so.

Mr. Avakian: Your Honor, if it will save time, we would be willing to stipulate that the checks that are involved in this instance—— [2860]

The Court (Interceding): Take this up with counsel privately.

Mr. Golden: Well, never mind if he doesn't want to.

The Court: Take it up with counsel privately.

Mr. Golden: Forget it.

Mr. Avakian: Your Honor, counsel is willing to have me suggest this stipulation, in the interest of time, that the checks about which he is now questioning the witness were issued payable to the Franchise Tax Commissioner of the State of California and to the Collector of Internal Revenue in payment of taxes due to those respective payees of the respective governments by the various partners indicated in the accounts as Mr. Ditto, Mr. Nelson,

(Testimony of Lawrence J. Semenza.)

Mr. Maundrell, Mr. Turner and Mr. Fricker, in payment of their income tax obligations, as shown by their returns filed with those respective governments. In making that stipulation, we do not want it understood that we think the matter is material one way or the other.

The Court: If you make a stipulation, make it.

Mr. Avakian: We stipulate to the fact.

Mr. Thompson: We will stipulate if he will eliminate the word "partner" from the stipulation and set forth the names of the persons.

Mr. Avakian: It is his own question.

The Court: Never mind with the stipulation. Go along [2861] with the trial.

A. The amounts are probably taken from the check books here in evidence, probably Exhibit 133. These books don't seem to show it, that period of time. I don't find the particular check number in the records.

Q. You don't find the particular check number in the record?

A. No, there is evidently another check book.

Q. Mr. Semenza, would you, during the recess, check on that please, and we will pass it.

A. If the records are here.

Q. That is what I anticipate, that you will look at the available records here. A. Yes.

Q. Now will you take the ledger account of the Menlo Club for the year 1946, Mr. Semenza, and turn to the capital account designated in the name

(Testimony of Lawrence J. Semenza.)

of Willie Kyne, or W. E. Kyne? A. Yes, sir.

Q. And according to the entries in that record, what withdrawals or charges were made against that account during the years 1945 and 1946?

A. None.

Q. I note on your Exhibit M-1, page 15, under the heading, "Partners Drawings, Kyne," you have included an item, \$16,005.50, is that recorded on the books and records of the Menlo Club? [2862]

A. Yes.

Q. Where? A. Check in exhibit here.

Q. Mr. Semenza, I hand you government's Exhibit 120, check drawn on the Day and Night Office, Bank of America, dated December 2, 1946, payable to the order of Wm. E. Kyne, in amount of \$16,005.50, made by the Menlo Club by Wm. E. Kyne, and with notation on it "Loan for Transit." Is that the check to which you refer?

A. It is. The testimony of Mr. Kyne that he withdrew the money.

Q. Is that particular check entered anywhere on the books and records of the Menlo Club?

A. No, it is not.

Q. Is there any indication in the books and records of the Menlo Club that that club maintained a bank account in the Day and Night office of the Bank of America?

Mr. Avakian: Just a moment—that is objected to, your Honor, because of the scope of the question. The question is not limited to the books and records

(Testimony of Lawrence J. Semenza.)

produced in evidence by the government, but asks apparently as to all books and records and there is testimony the government has other books and records which have not been produced here. I object to the question as going outside the scope of the evidence, unless counsel limits—— [2863]

Mr. Thompson: I will withdraw the question.

Q. Is there any indication in the ledger accounts, journals, of the Menlo Club here in evidence, that that club maintained a bank account in the Day and Night Office of the Bank of America?

A. There are bank statements here.

Q. Are they recorded in the ledger accounts and journals of the Menlo Club?

A. Regardless of whether they are, they must be taken into consideration.

Mr. Thompson: May the answer be stricken?

The Court: It may go out. Listen to the question and answer it.

A. No, they are not.

Q. I agree they must be taken into consideration. I was just asking whether they appear in the ledger accounts and books of the Menlo Club?

A. That is correct.

Q. So you have taken into consideration that check for \$16,005.50 and as entered on your computation as withdrawal by Mr. Kyne during 1946; is that correct?

A. I have. I could have done it one other way, by showing it as a loan to Mr. Kyne, which would have increased the assets \$16,005.50 and showed a

(Testimony of Lawrence J. Semenza.)

greater capital account for Mr. Kyne, but the net result would be the same as the way I [2864] have it.

Q. And according to your computation on page 15 of Schedule M-1, the books and records account for the disbursements after operating expenses of \$86,117.75 out of \$103,500.31 for the Menlo Club for the year 1946?

A. That is correct.

Q. And so you have entered an entry, "Withdrawn by Remmer, \$17,382.56"; is that correct?

A. That is correct.

Q. And what did the books and records of the Menlo Club show as to amount actually withdrawn by Mr. Remmer during 1946?

A. Some three thousand dollars—four thousand dollars approximately.

Q. And those withdrawals are recorded on an account under the heading Elmer Remmer?

A. They are.

Q. So that left you with \$17,382.56 less \$4,000, or a balance of \$13,382.56 which was not accounted for as disbursements?

A. That is correct.

Q. So you have assigned that as a withdrawal by Mr. Remmer?

A. That is correct.

Q. If that money at December 31, 1946, remained in the Menlo Club safe, it would be proper to add it as an additional asset of the Menlo Club, would it not?

A. If that money, or any larger or smaller amount, was there, [2865] I would give it effect, if I knew what it was.

(Testimony of Lawrence J. Semenza.)

Q. So if you should charge that money out as a withdrawal by Mr. Remmer and he still had it on hand at December 31, 1946, it should be added back into his capital account with the Menlo Club, as you have computed it; is that correct?

A. If I knew there was any cash, I should take it into consideration.

Q. And are there any records here available showing that that sum of \$13,382.56 was actually expended?

A. None that I know of.

Q. In Mr. Remmer's capital account for the year 1946 you have a balance of \$113,433.39, after deducting as a withdrawal the sum of \$13,382.56, which is not accounted for in the books?

A. That is correct.

Q. And if you should add back into Mr. Remmer's capital account that sum of \$13,382.56, his capital account would have been \$126,815.95; is that true?

A. 126 thousand some odd dollars.

Q. Also if you should add to that the sum of \$63,661.28 cash which you have assigned to Mr. Remmer and were unable to account for in the year 1945, if you should also add that back into his capital account at December 31, 1946, his capital account would have been some 190 thousand odd dollars; is that correct?

A. It would, provided I assume that no other partners took it or that the money was there. [2866]

The Court: We will take a recess at this time.

(Jury and alternate jurors admonished and five-minute recess taken at 11:00 o'clock.)

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MR. SEMENZA**

resumes the witness stand on further

**Cross-Examination**

By Mr. Thompson:

Q. In failing to include, Mr. Semenza, you have assumed it was spent without any record being present of the expenditure; is that correct?

A. Well, I assumed that Mr. Remmer took it.

Q. And that he spent it?

A. He did anything he wanted with it.

Q. And if it should be included as Mr. Remmer's asset on your net worth computation, rather than asset of the Menlo Club, the result would have been the same?

A. If it existed, it would be included under his personal statement.

Q. Now during the recess did you have an opportunity to check on the withdrawals you entered?

A. I had the opportunity, but there are a few things I have not found in the evidence of the checks being here. I have only examined a few of the Menlo Club so far.

Q. Did you refer to the bank record account of the Menlo Club? [2867]

A. That is what I saw.



(Testimony of Lawrence J. Semenza.)

Q. I do not mean cancelled checks and statement; I mean bank record in the ledger.

A. I did, but I couldn't find those checks.

Q. They were not entered? A. No.

Q. Mr. Semenza, I show you plaintiff's Exhibit 113, which is an agreement between Mr. Elmer Remmer and Mr. Willie Kyne, and in making your net worth computation in this case, did you have that agreement in mind? A. I did.

Q. Did you note, Mr. Semenza, that that agreement purports to be an agreement between Mr. Elmer F. Remmer, first party, and Mr. Wm. E. Kyne, second party, relating to the acquisition by Mr. Kyne of a 15 per cent interest in the Menlo Club? A. That is correct.

Q. I note that in your Menlo Club schedules contained in Exhibit M-1, page 13, you have set forth a capital account for Mr. Kyne as a partner for the year 1945; is that correct?

A. That is correct.

Q. When you placed that construction upon the evidence in this case, did you have in mind that the agreement between Mr. Remmer and Mr. Kyne, plaintiff's Exhibit 113, is dated November 4, 1946?

A. I did. [2868]

Q. Did you also have in mind that from February, 1945, until June, 1946, Mr. Kyne was in the United States army? A. I did.

Q. Did you also have in mind that this agreement, dated November 4, 1946, speaks in the present tense, where it recites: "It is the desire of first

(Testimony of Lawrence J. Semenza.)

party to sell, assign and convey to second party a 15 per cent interest in and to said Social room business and in and to said restaurant business”?

Mr. Avakian: We object to that as an incomplete recital of the document on that point because it also recites it is effective as of May 1st of 1945. The incomplete recital is unfair to the witness and an improper representation of what the document contains.

Mr. Thompson: I will read the whole document if you desire. I intend to get to that.

The Court: The objection is overruled. You may proceed.

Q. Did you have that in mind? A. I did.

Q. Did you also have in mind that this agreement, dated November 4, 1946, also speaks in the present tense where it says: “Said party is desirous of acquiring a 15 per cent interest in and to said social room business and in and to said restaurant business”?

A. I did.

Q. You also had in mind the provision of this agreement as [2869] follows: “Effective as of May 1, 1945, first party hereby does assign, transfer, set over and convey to William E. Kyne, second party herein, a 15 per cent working interest in and to the profits derived from the operation of the aforesaid social room and restaurant business as aforesaid”?

A. I did.

Q. Mr. Semenza, if this agreement was entered into on the 4th day of November, 1946, and not earlier than that date, would it have been possible

(Testimony of Lawrence J. Semenza.)

to make an entry in the books and records of the Menlo Club in the year 1945, or at any time prior to November 4, 1946, showing that Mr. Kyne had a distributive share of that enterprise?

Mr. Avakian: Objected to, your Honor, as assuming facts contrary to the evidence, because the testimony is that this, and similar Menlo documents, were simply a reduction to writing of oral agreements that were previously in existence.

The Court: Objection overruled. Answer the question.

A. Yes, on the basis of their oral agreements and testimony in this case, and the fact that the tax returns were filed for the year 1945 evidencing that fact.

Q. Did you have in mind the provision of Exhibit 113 as follows: "It is understood and agreed between the parties hereto that said working interest does not represent an actual interest in and to assets of said business or in and to the leasehold in said premises, that is to say, all monies [2870] credited to the account of second party, pursuant to said working interest, shall be applied on account of second party's payment for an actual interest in and to said social club business and restaurant business"?

A. I did, because it is the usual practice in partnerships of a similar nature.

Q. Did you further have in mind this provision of the agreement: "It is further understood and agreed between the parties hereto that an actual

(Testimony of Lawrence J. Semenza.)

interest in and to said business and other assets shall not be acquired by second party (meaning Mr. Kyne) until first party (Mr. Remmer) has been fully reimbursed in the sum of \$175,000"?

A. I did.

Q. And according to your examination of the books and records of the Menlo Club as of December 31, 1946, had Mr. Remmer withdrawn from said business the sum of \$175,000? A. Not quite.

Q. According to your computation, the amount withdrawn by him at December 31st was—

A. Approximately 138 thousand dollars.

Q. Approximately 138 thousand? A. Yes.

Q. The next item you have entered on Exhibit M-1, page 2, is Item 11, "Equity in Transit Smoke Shop." A. Yes, sir. [2871]

Q. And you have entered that as \$15,966.57; is that correct? A. That is correct.

Q. And that is the same transaction which is entered as Item 7 on government's Exhibit 183, showing a net worth at the end of 1946 of \$32,621.46? A. That is correct.

Q. I wish to direct your attention to plaintiff's Exhibit 98, Mr. Semenza; are you familiar with that? Did you have that in mind in making your computation with reference to the Transit Smoke Shop? A. I did.

Q. Did you have in mind the recital in that agreement which is an agreement dated November 21, between Gordon Partee, Elmer Remmer and Wm. E. Kyne, to the effect that second parties, that

(Testimony of Lawrence J. Semenza.)

is, Mr. Kyne and Mr. Remmer, had contributed \$32,011.01 toward the assets of the partnership?

A. I did.

Q. Did you also have in mind the testimony of Mr. Kyne, to the effect that he had received, out of the Menlo Club bank account in the Day and Night Branch of the Bank of America, a check in the sum of 16,005 dollars and some odd cents?

A. I did.

Q. And that is the same check which was shown you a few minutes ago? A. It is. [2872]

Q. Did you have in mind the notation on that check, "Loan for Transit"; is that correct?

A. That is correct.

Q. Did you also have in mind Mr. Kyne's testimony that he cashed that check and placed it in a safe deposit box and used it for the other businesses?

Mr. Avakian: Objected to as an incomplete and misleading recital of Mr. Kyne's testimony, because on that same matter he also said that that represented his one-half contribution of the 32 thousand dollars investment in the Transit Smoke Shop. That was a part of his testimony on that point, your Honor.

The Court: Objection will be overruled.

A. I did have that in mind from his testimony, and I concluded he was paying Mr. Remmer back for his half share.

Q. And did you have in mind that, accepting your view of the evidence, the other business for

(Testimony of Lawrence J. Semenza.)

which that money was used could have consisted of the B. & R. Smoke Shoppe, having, according to your view of the evidence, three interested persons, Mr. Kyne, Mr. Remmer, and Mr. Lando, the 110 Eddy Street, having, according to your view of the evidence, four partners, Mr. Kyne, Mr. Remmer, Mr. Cavani and Mr. Turner, the Day-Night Cigar Store, having, according to your view of the evidence, three partners, Mr. Remmer, Mr. Kyne and Mr. Lando; the 186 Club, having, according to your view of the evidence, several [2873] interested parties, including Mr. Remmer, Mr. Kyne, Mr. Caselini, Mr. Busterna, and others?

Mr. Avakian: Object to the question as assuming facts contrary to the evidence and calling for speculation of the witness, and with respect to the statements contrary to the evidence, first of all it assumes and states that Mr. Semenza took some view with respect to the 186 Club that is contrary to the evidence, because nowhere in Mr. Semenza's testimony did he express any views with respect to the 186 Club in any respect; secondly, it assumes facts which have not been testified to here by any witness with respect to the use of this money for these various enterprises which Mr. Thompson has mentioned.

The Court: Objection overruled. You may answer the question.

A. I have testified to nothing on the 186 Club. Mr. Remmer could have used the money for the enterprises you stated; he could also have loaned

(Testimony of Lawrence J. Semenza.)

it to Cal-Neva. He could have done many things with it.

Q. Is there any record here in evidence of what disposition that money was made? A. No.

Q. And is there any evidence that you know of here in the record, other than Mr. Kyne's statement, that it was used for the various businesses? [2874]

A. No.

Q. Now with regard to your Item 21, "Due Cal-Neva, Inc.," on Exhibit M-1, that same subject matter is treated as Item 27, the second item under the heading "Liabilities," on government's Exhibit 183, is it not? A. That is correct.

Q. And with respect to the balance owing by Mr. Remmer to Cal-Neva, Inc., as of December 31, 1943, your schedule, Exhibit M-1, and the government's Exhibit 183 are the same?

A. That is correct.

Q. That is the sum of \$23,152.77?

A. Yes, sir.

Q. Your schedule and government's Exhibit 183 are also the same as to the year-end 1944, that is, the sum of \$18,361.68? A. That is correct.

Q. And your schedule and government's Exhibit 183 are the same as to the year-end 1946, that is, the sum of \$60,742.39? A. That is correct.

Q. The only difference between your computation and government's Exhibit 183 occurs in the year 1945? A. That is correct.

Q. And there is a difference between your figure and that set forth in Exhibit 183 of \$2,500?

(Testimony of Lawrence J. Semenza.)

A. That is correct.

Q. That figure of \$2,500 is represented by a loan made by [2875] Cal-Neva to Mayris Chaney, as she testified to, in 1944; is that so?

A. That is correct.

Q. And according to her testimony it was repaid by December 31, 1945? A. Yes.

Q. Is that your recollection?

A. Yes, sir; and I also verified that by the closing entries for Cal-Neva for the fiscal year April 30, 1946, that it occurred during the season of '45; that is, repayment was made during the season of '45.

Q. And so you made an adjustment of increasing the amount of Mr. Remmer's obligation to Cal-Neva for the year 1945 by the sum of \$2,500?

A. Yes, sir.

Q. Will you refer to the Cal-Neva records, please, and read the entries showing that that money was repaid in 1945?

A. Dated April 30, 1946, charge E. Remmer with cash received from Mayris Chaney \$2,500 as payment of his loan to the company and to write off uncollectable loans.

Q. Now does that entry show that repayment was made in 1945? A. Not necessarily.

Q. And at the time Mr. Weaver made up his schedule, the only evidence before him upon which he could base a net worth computation was the Cal-Neva record? [2876]

Mr. Avakian: That is objected to, your Honor,



(Testimony of Lawrence J. Semenza.)

as calling for speculation, opinion and conclusion of Mr. Semenza as to what was before Mr. Weaver. Only Mr. Weaver would know that.

Mr. Thompson: I will withdraw the question.

Q. Mr. Semenza, do you know of any other record in evidence in this case, relating to the Mayris Chaney loan, which was in evidence at the close of the government's case, other than the entry in the Cal-Neva record which you have before you?

A. I know of none.

Q. And the Cal-Neva are records which the accounting firm of Semenza & Kottinger have kept; is that correct?

A. That is correct. Mr. Weaver made the assumption at other fiscal year-ends that entry occurred in the calendar year, but he did not in that case.

Q. Now under your designation "Liabilities" on your Schedule M-1, you have included item 28, due to William Remmer?

A. Yes, sir.

Q. And no similar item appears on the government's Exhibit 183; is that correct?

A. That is correct.

Q. And the effect of including the obligation to Mr. William Remmer at each of the year-ends in question is to reduce the net worth of each year-end of Elmer Remmer?

A. That is correct. [2877]

Q. Upon what evidence or record did you base the entry December 31, 1943, to William Remmer, \$358.15?

(Testimony of Lawrence J. Semenza.)

A. The exhibit presented by Mr. William Remmer, of which photostatic copies have been made.

Q. That is plaintiff's No. 186?

A. Yes, sir.

Q. That constitutes a photostat of a record of the firm of Remmer & Jordan?

A. That is my understanding.

Q. What does that show?

A. It shows a running account with Mr. Remmer starting in 1942 through November 15, '46.

Q. What does that account show as to what occurred with the balance due at the year-end December 31, 1942?

A. There is an entry December 31, journal 74, marked bad debt \$234.36, was credited to the account, leaving a balance of \$2.59.

Q. And as an accountant, what does that entry indicate to you?

A. I assume they considered it uncollectible to that extent.

Q. And that was December 31, 1942?

A. That is correct.

Q. Now what does the balance show at December 31, 1943?      A. A balance of \$358.15.

Q. And that is the amount entered on your Schedule M-1?      A. That is correct. [2878]

Q. And in considering that an outstanding liability of Elmer Remmer, did you also take into consideration Mr. William Remmer's testimony that he had not been paid?      A. That is correct.

(Testimony of Lawrence J. Semenza.)

Q. What is the balance shown on that record at December 31, 1944? A. \$559.66.

Q. The figure you have entered on Exhibit M-1 is \$1,028.06. Will you explain how you arrived at that?

A. To the balance here I have added these two items—on August 25 of 1944 a credit in the sum of \$448.40 was credited to the account and there was noted charge to W. D. Remmer, and on December 31 there is another charge to William D. Remmer, \$20, credited to the account. In view of the fact William Remmer's testimony indicated that he had paid some of these amounts, I added the \$559.66 to the \$468.40 to arrive at \$1,028.06.

Q. Now I would like to direct your attention to Item 19 of Exhibit M-1, where for the year ending December 31, 1944, under the head "Autos," you show the sum of \$468.46. What does that represent?

A. That represents a charge made July 31, 1944, to Elmer Remmer for a notation, 1936 Dodge, \$468.40. Mr. William Remmer testified that there was a Dodge pick-up that he purchased.

Q. And did you have Mr. William Remmer's testimony in mind that according to his recollection the title to that Dodge [2879] pick-up had been transferred to Cal-Neva, Inc.?

Mr. Avakian: Mr. William Remmer's testimony was——

The Court: Are you going to object?

(Testimony of Lawrence J. Semenza.)

Mr. Avakian: I object on the ground it is contrary to the evidence. He said he thought——

The Court: Let me have the question.

(Question read.)

The Court: Answer the question.

A. I did.

The Court: We will take our recess now.

(Jury and alternate jurors admonished and noon recess taken at 11:45 a.m.)

Afternoon Session

February 13, 1952—1:30 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. SEMENZA

resumes the witness stand on further

Cross-Examination

By Mr. Thompson:

Q. Mr. Semenza, in connection with the item \$468.40 under the heading "Autos," Item 19 on your Exhibit M-1, under the column December 31, 1944, you testified, I believe, that that represents an automobile which Mr. William Remmer testified was purchased by Elmer Remmer from Remmer & Jordan?

A. Yes, sir.

Q. And on what date? [2880]

A. July 31, 1944.

(Testimony of Lawrence J. Semenza.)

Q. Will you refer to the Cal-Neva ledger under check No. 7225, a check dated June 12, 1946, and tell us what that check was for?

A. June 12, 1944, check No. 7225, was issued to Remmer & Jordan, \$470.58. It is charged to auto and truck expense.

Mr. Avakian: Your Honor, may we have again the date of that check?

The Court: Yes.

A. June 12th.

Mr. Avakian: I thought he said 1944.

A. I beg your pardon—what is the check number?

Mr. Thompson: It is check dated June 12, 1946, No. 7225.

A. June 12, 1946, Remmer & Jordan, \$470.58.

Q. Mr. Semenza, I show you plaintiff's Exhibit 188 for identification. Do you recognize that as a photostat of the check, the entry of which you have just read from the Cal-Neva ledger?

A. Photostat of check No. 7225, yes, what I just read.

Mr. Thompson: I offer in evidence as plaintiff's Exhibit 188.

Mr. Avakian: Your Honor, we have no objection to the use of the photostat, but insofar as the materiality of the offer is concerned, we object to it on the ground it is incompetent, irrelevant and immaterial, has not been connected in any [2881] way with any transactions in this case, has not been connected in any way with the defendant. If your

(Testimony of Lawrence J. Semenza.)

Honor will look at the check, you will see that the date of it is two years later than the date of the transaction that William Remmer testified to and concerning which Mr. Semenza is being questioned. The transaction was in 1944, the check is dated June 12, 1946. The amounts are different, the parties are different; namely, William Remmer referred to a transaction he had with Elmer Remmer in 1944. This check refers to a transaction in a different amount in June of 1946 between Cal-Neva, Inc., and Remmer & Jordan. If you will look at Exhibit 186, which is the ledger cards of Remmer & Jordan for the Elmer Remmer account, your Honor will see that there is no transaction on that account that relates to the check that has been offered as Exhibit 188, so that we do not see how it can possibly be connected with anything in this case.

Mr. Thompson: If the Court please, as I recall the testimony of Mr. William Remmer, it was his recollection that the truck in question had been transferred, the title to it, to Cal-Neva, Inc. The record that he has produced purports to be a record of Remmer & Jordan account with Helen and Elmer Remmer, and this check, indicating a payment by Cal-Neva, Inc., to Remmer & Jordan on an account for substantially the same amount as the cost of the truck, which was transferred by title to Cal-Neva by Remmer & Jordan, is sufficient [2882] connection, it seems to me, to render it admissible in evidence. The weight to be given to it is another

(Testimony of Lawrence J. Semenza.)

thing. It is the authenticity of the records of Remmer & Jordan.

Mr. Avakian: The records of Cal-Neva Mr. Semenza just read do not even show it was for the purchase of the vehicle, just shows it was for auto expense, \$470. That expense might be overhaul of a motor, we don't know. When Mr. William Remmer was here the prosecution had this photostat, it is taken from their files, he might have thrown some light, perhaps he could have connected it, we don't know, but on the present state of the record, a check dated two years after the transaction shown in Elmer Remmer's personal account, has no connection. The amount is different, there is no showing it is for the same item, it is for a different entity; I don't see how we can possibly know, on the present state of the record, without further explanation from Remmer & Jordan, whether these are the same items or not.

Mr. Thompson: The Court will recall when Mr. William Remmer was here he did not have with him his ledger record and that was produced later.

Mr. Avakian: The record also shows, your Honor, that this particular transaction between Remmer & Jordan and Elmer Remmer, as shown on the ledger card, was inquired into by the government more than a year ago when they questioned William Remmer and asked him about that Dodge truck. The record will [2883] show that they had Mr. William Remmer up here twice during the trial, that he had the ledger cards here with him

(Testimony of Lawrence J. Semenza.)

when he came up to be interviewed by the government and they had this photostat available and in the courthouse when Mr. William Remmer was here on the stand. I do not think the prosecution is in the position to say that they were taken by surprise on this matter, because more than a year ago they examined the ledger cards, they have now been put in evidence, they examined William Remmer on this particular matter, they talked to him twice during the trial, and they have had photostat of the check all this time. Now we certainly do not want to be in the position of objecting to anything material, but we do not feel, particularly in the absence of anything in the nature of surprise, things that are not shown to be material, are not shown to be connected, should be received in evidence.

The Court: The exhibit will be admitted in evidence.

Q. Mr. Semenza, do the Cal-Neva records themselves contain any further information relating to that transaction?

A. The only information here is it is charged to auto and truck expense for that year.

Q. Now you have carried that same item of \$468.40 over to December 31, 1945, as part of Item 19 on Exhibit M-1; is that correct?

A. That is correct, Mr. Thompson.

Q. And then you have entered a figure for automobiles of [2884] \$2,185.31 at December 31, 1946; is that correct?

A. That is correct, Mr. Thompson.



(Testimony of Lawrence J. Semenza.)

Q. And how is that figure computed?

A. The difference between \$468.40 and \$2,185.31 is an amount stated in Mr. William Remmer's testimony as the Pontiac car.

Q. Now in the liability section of your Exhibit M-1, page 2, under Item 28 due to William Remmer at December 31, 1946, you have entered the figure \$9,592.88; is that correct?

A. That is correct, Mr. Thompson.

Q. How is that figure computed?

A. In Mr. Remmer's testimony he stated that at the end of '46 it was his recollection that the amount owed by his brother had increased eight to ten thousand dollars, so to the amount shown in the ledger cards here I added eight thousand dollars, bringing it up to \$9,592.88.

Q. In including the item of \$8,000 at December 31, 1946, as being due to William Remmer from Elmer Remmer at that time, you base that, you say, upon the testimony of William Remmer?

A. That is right.

Q. And did you take into consideration the following testimony of Mr. Remmer, as contained in government's Exhibit 184——

Mr. Avakian: Just a moment — 184 is not in evidence. It is marked for identification only. I believe Mr. Thompson was looking at the clerk's stamp that said 184 was for identification. [2885]

Mr. Thompson: That is correct, it is 184 for identification.

Mr. Avakian: Then we object, your Honor, to

(Testimony of Lawrence J. Semenza.)

any question which relates to a document which is not in evidence. Your Honor will recall that a portion of that statement was by stipulation read into the record, and insofar as it is incorporated in the record, we have no objection. The record should be used rather than any portion of the statement which was not in evidence.

Mr. Thompson: To facilitate the examination, I intended to read from the statement, but if you want to furnish me with a transcript, I have no objection.

Mr. Avakian: We will be glad to make our copy of the transcript available, Mr. Thompson, calling his attention to that portion which was read into the record. I believe it begins at page 2583 and continues for several pages, on both cross and direct examination.

Mr. Thompson: I will read the following testimony of William Remmer to you, Mr. Semenza, as it appears in the transcript, starting with page 2583: (Reads from transcript, page 2583, line 21, through page 2585, line 20).

Q. Do you recall that?      A. Yes, sir.

Mr. Avakian: May we have an objection and have the answer stricken for the purpose of objecting? He answered as I [2886] was about to make my objection.

The Court: Yes.

Mr. Avakian: Our objection is the reading of the testimony is incomplete on that particular point, because Mr. Remmer also testified that at

(Testimony of Lawrence J. Semenza.)

the end of 1946 Elmer Remmer owed him between eight and ten thousand dollars and for 1943 it was approximately \$300, and in reading of only a portion of the testimony on that point is improper, leaves a misleading impression with the jury, and is not fair to the witness.

Mr. Thompson: I do not consider that to be a proper objection.

The Court: The motion is denied and the answer will stand. The objection is overruled and the answer will stand.

Q. Mr. Semenza, in connection with the William Remmer transaction, do you recall Mr. William Remmer's testimony that Mr. Elmer Remmer also had other automobiles? A. Yes, sir.

Q. And what effect, if any, did you give to that testimony in computing the net worth of Mr. Elmer Remmer?

A. None, because I had no information from which I could determine what he had.

Q. Referring to your Item No. 27 under "Liabilities," due to Gene Schriber at December 31, 1945, \$125,000, and at December 31, 1946, \$75,000, that is the same subject matter as is set [2887] forth in Item 33 on government's Exhibit 183; is that correct? A. It is.

Q. There is a difference, however, in that in government's Exhibit 183 the amount of the liability at December 31, 1945, is set forth as \$100,000, while in Exhibit M-1 it is set forth at \$125,000; is that correct? A. That is correct, Mr. Thompson.

(Testimony of Lawrence J. Semenza.)

Q. I would like to show you government's Exhibit 140, which is a ledger sheet entitled "Furniture, Fixtures, Equipment and Buildings." On that Exhibit 140, what is the amount shown to be due to Gene Schriber as of December 31, 1945?

A. \$100,000.

Q. Have you at any time seen the original of Exhibit 140, which is a photostat of a ledger sheet?

A. Not to my recollection. I have refreshed my memory by referring to memorandums regarding the Menlo Club records and we have no indication that that particular ledger sheet was in the record at the time that we got them.

Q. Is it not true that at the time that the photostat of the ledger was shown to Mr. Maundrell and identified by him when he was testifying as a witness in this case you, at a recess, remarked to me, and also to Mr. Campbell, that you had a recollection of seeing the original of that photostat?

A. I said I might have seen it. [2888]

Q. Is it not true that you said that you had seen it, according to your best recollection?

A. According to my best recollection, I said that I might have seen it.

Q. Now in making your net worth computation as set forth on Exhibit M-1, you have entered as net worth certain figures with the notation "plus cash"; is that correct?      A. That is correct.

Q. And it is true, is it not, that any amount of cash that may have been on hand at the end of the year-ends in question would increase Mr. Remmer's

(Testimony of Lawrence J. Semenza.)

net worth at that time?      A. That is true.

Q. In your chart designating the list of assets and liabilities, to the extent shown by the evidence, you have not attempted to compute an understatement or overstatement of income on the net worth basis, have you?

A. I have not on that exhibit, no.

Q. Is it not true that in making a computation of the understatement or overstatement of income on the net worth basis, it is proper to add to the net worth as shown by the evidence at each year-end the amount of federal or state income taxes paid by the taxpayer during that year?

Mr. Avakian: Objected to as calling for opinion and conclusion of the witness on a matter of law and as containing an erroneous statement of the law. You do not add the expenses [2889] to the net worth by the net worth method. You first determine the increase in net worth and then add it to the increase, not to the net worth.

Q. It is proper, is it not, Mr. Semenza—

The Court (Interceding): Do you withdraw this question?

Mr. Thompson: Yes, your Honor.

Q. —to add federal income taxes to the increase in net worth in computing the amount of income?      A. That is correct.

Q. And it is also proper to add the amount of non-deductible personal expenses of the taxpayer during the year?      A. That is correct.

Mr. Thompson: I would like to bring out, your

(Testimony of Lawrence J. Semenza.)

Honor, so the jury can see it, chart marked Exhibit M-1, page 1.

Q. According to your computation, Mr. Semenza, for the year 1945, as shown on Exhibit M-1, page 1, Mr. Remmer received income in the amount of approximately \$75,000 during that year; is that correct? A. That is correct.

Q. And according to your net worth computation Mr. Remmer, during that same year, suffered a reduction in his net worth of approximately \$70,000?

Mr. Avakian: Just a moment. We object to that, your Honor, as showing a statement contrary to Mr. Semenza's testimony. His testimony was first that he couldn't compute the net [2890] worth because the amount of cash was uncertain; secondly, the chart itself shows change in net worth as 70 odd thousand dollars plus or minus change in cash, and that is the very vital thing that is omitted from what Mr. Thompson states in his question Mr. Semenza testified, so the question assumes testimony on the part of Mr. Semenza contrary to his testimony.

The Court: Let me have the question.

(Question read.)

The Court: You may answer the question.

A. He suffered the reduction of \$70,339.21 plus or minus change in cash.

Q. And he had an income during that year, according to your computation, of approximately \$75,000? A. That is correct?

(Testimony of Lawrence J. Semenza.)

Q. As a result of your computations, there remains approximately 145 thousand dollars during the year 1945 which is not accounted for by any books, records or evidence here in Court; is that correct?

A. It may be more or less, depending on change in cash.

Q. But the cash is not accounted for by any book or record, is it?      A. No, it isn't.

Q. So the total sum of 140 thousand dollars is not accounted for, according to your computation?

A. That is correct. [2891]

Mr. Thompson: We have no further cross-examination, your Honor.

#### Redirect Examination

By Mr. Avakian:

Q. Do you have Exhibit M-1 before you, Mr. Semenza?      A. I have.

Q. And you also have Exhibit 169, which is Mr. Weaver's exhibit in regard to the B. & R. Smoke Shoppe?      A. No, I do not.

(Hands witness exhibits.) .

Q. On page 4 of Exhibit M-1, you have set forth no amount as bank roll of the B. & R. Smoke Shoppe at the end of 1943, 1944 or 1946, and I believe you stated that the reason was that you found no evidence in the record of any amount of bank roll on hand on those dates. Now if you will assume that the bank roll of the B. & R. Smoke Shoppe at

(Testimony of Lawrence J. Semenza.)

the end of 1943, whatever the amount may have been, was the same as the amount of the bank roll at the end of 1946, would it have made any difference in the computation of income on the net worth method, as contrasted with putting in no amount as bank roll on those years?

A. No, it would not.

Q. In other words, in computing income on the net worth method, the significant thing is the change in the amount of the asset from the beginning to the end of the period?

A. That is right.

Mr. Campbell: Objected to as not proper re-direct examination. [2892]

The Court: The answer may stand.

Q. Now you were questioned at considerable length on cross-examination as to whether the books and records of the various business enterprises, which are in evidence here, contain any reference to a personal loan made by Mr. Remmer to Mayris Chaney, a personal loan made by Mr. Remmer to Hazel Harris and her husband, to some residential property purchased by Mrs. Remmer and her sister-in-law, and to the amount owed to the Bank of America as a loan with respect to the purchase of a piece of residential property, and I believe in each instance you stated that the records of the business enterprises in evidence here did not contain a reference to those transactions. I want to ask you this, Mr. Semenza, in computation of the net income of a business, does it make any difference whatsoever whether the owners of the business



(Testimony of Lawrence J. Semenza.)

made personal loans to personal friends, with respect to any portion of their money?

A. Not as far as the business is concerned.

Q. And does it make any difference in the income of that business whether the records of the business show the amount of a personal loan owed to the bank with respect to residential property?

A. No.

Q. Is it customary, based on your experience as an accountant, to show in the records of a business any personal [2893] financial transactions which an owner of the business may have with personal friends?

A. It is very unusual. In some instances there is reference to it.

Q. But it is very unusual? A. It is.

Q. In computing the net income of the Menlo Club, of the Day-Night Cigar Store, of the 110 Eddy Street, or of any other of the enterprises shown in this evidence, and in analyzing the receipts and disbursements of those businesses, for the purpose of determining the net income, would it make any difference whatsoever to you, as an accountant, how much money Mr. Remmer, as an individual, had loaned out to Hazel Harris or Mayris Chaney or had borrowed from the Bank of America? A. No.

Q. In computing the net income of a business, does it make any difference at all, from an accounting point of view, whether the owner or owners of the business keep in their business records a record

(Testimony of Lawrence J. Semenza.)

of any of their personal transactions, such as the purchase of clothing, the buying of lunches, or anything else of a personal nature?

A. It isn't necessary.

Q. Does it have any bearing on determining the net income of that business?

A. It does not. [2894]

Q. And is it customary for business men to enter in their business records records of transactions of that type?

A. Well, it is unusual, I would say.

Q. Now I believe you stated that in your judgment the proper method of computing the net income of Elmer and Helen Remmer, from the evidence in this case, is in the manner and with the result set forth on page 1 of your Exhibit M-1?

Mr. Thompson: Objected to as leading and attempted recitation of the witness' previous testimony.

Mr. Avakian: I hadn't come to the question yet, simply calling attention to the—as to which the question is directed.

The Court: I think it is leading.

Mr. Avakian: I have not asked the question yet. How can it be leading if you don't know what it is?

The Court: Why not ask it?

Mr. Avakian: I was going to; I was interrupted.

Q. My question, Mr. Semenza, is this—in computing the net income of Helen and Elmer Remmer, as shown on page 1 of Exhibit M-1, did you use the

(Testimony of Lawrence J. Semenza.)

net worth method or did you use receipts and disbursements method?

A. I used the receipts and disbursements method.

Q. And in using the receipts and disbursements method, is it or is it not necessary to have a record of the assets of the business in existence at any particular time?

A. It is not necessary. [2895]

Q. It is possible, then, to compute income without that information?

A. That is correct.

Q. And is the receipts and disbursements method, rather than the net worth method, the method which is customarily used by accountants in computing the income of businesses?

Mr. Thompson: Objected to as not redirect—already asked and answered on direct.

The Court: Objection sustained. It is not proper redirect examination.

Mr. Avakian: Well, I would like to explain why it is proper, because it was gone into on cross.

The Court: I have ruled it is not proper.

Mr. Avakian: Well, may I have the courtesy of explaining to your Honor my position?

The Court: No.

Q. In your cross-examination you were questioned as to whether or not the books and records of these various enterprises, to the extent that they have been introduced in evidence here, contained a record of the assets of these various businesses at the end of the particular years. In computing the income of a business on receipts and disbursements

(Testimony of Lawrence J. Semenza.)

method, is it necessary to have such records?

A. No, it is not.

Q. And do the books and records of the Menlo Club, to the [2896] extent that they have been introduced in evidence here, contain the information necessary for you, as an accountant, to compute the income of the Menlo Club on the basis of receipts and disbursements method?

A. They do.

Q. Is that also true of the Day-Night Cigar Store?

A. That is correct.

Q. And is that also true of 110 Eddy Street?

A. It is.

Q. Is that also true of the Transit Smoke Shop?

A. It is.

Q. And assuming that the entries of the net wins and losses in the books of the B. & R. Smoke Shoppe are correct entries, are those entries sufficient to enable you to determine the net income of the B. & R. Smoke Shoppe?

A. They would be.

Q. Do you have Exhibit 164 before you? Would you refer to page 5 of your Exhibit M-1, balance sheet Day-Night Cigar Store, and particularly to the item of equipment in amount of \$10,400 shown in that identical amount at the end of each year, 1943, 1944, 1945, and 1946?

A. Yes, sir.

Q. On cross-examination you testified that—that the date of the last entry in the Day-Night books showing that amount of equipment was January 1, 1946, and your attention was directed [2897] to the fact that the 1946 tax return of the Day-Night

(Testimony of Lawrence J. Semenza.)

Cigar Store showed an amount of equipment of \$2,100 at the end of 1946. Now, Mr. Semenza, if for December 31, 1946, instead of using the equipment figure of \$10,400, you had used the \$2,100 figure shown on the tax return, would that have increased or decreased the net worth of the Day-Night Cigar Store on December 31, 1946?

A. It would decrease it.

Q. And in computing income on the net worth method, does the decrease of the net worth at the end of the period have the effect of decreasing or increasing the income?

A. It has the effect of decreasing it.

Q. So that by using the higher figure of \$10,400 that you did use, the effect of it, in comparison with \$2,100 item mentioned by Mr. Thompson, was to increase the closing net worth and to increase any income computed on the net worth method?

A. That is correct.

Q. So that had you used the lower figure, in other words, your results would have been more favorable to the defendant than the results from the figure you did use?

Mr. Thompson: Objected to—calls for conclusion.

Mr. Avakian: It is a summarization.

Mr. Thompson: We object to counsel summarizing.

Mr. Campbell: It is leading, also.

The Court: Objection sustained. [2898]

Q. You also testified, in connection with your

(Testimony of Lawrence J. Semenza.)

computations of the income of the Day-Night Cigar Store, that in making the computations of income which are set forth on pages 7 and 8 of Exhibit M-1, you made certain postings in the general ledger. Will you state from what source you made those postings?

A. From the cash book, cash receipts and disbursements record, of the Day-Night Cigar Store.

Q. And were the entries of receipts and disbursements from which you made the posting contained in the books themselves?

A. They were.

Q. And were you able, from the entries in the books themselves, to get the necessary information to make the posting to the general ledger?

A. I was.

Q. And in your business as an accountant, Mr. Semenza, do you frequently find that bookkeepers keeping the books of a business, fall behind in postings to the general ledger from cash receipts and disbursements record?

Mr. Thompson: Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Mr. Avakian: It is very material because inadequacy contention is being made in connection with the charge of fraud.

The Court: He may answer.

A. It is very unusual in our practice to have complete postings. [2899]

Q. That is very unusual, you say?

(Testimony of Lawrence J. Semenza.)

A. It is.

Q. Now you also stated that in preparing Exhibit M-1, in some instances it was necessary for you to refer to the testimony in conjunction with the entries in the records, in order to make proper computations. Is it customary or not customary, in your business as an accountant, to have to make inquiries of bookkeepers and other persons connected with the business, regarding the transactions reflected in the books, in order to complete your accounting analysis?

Mr. Thompson: Objected to as irrelevant and immaterial. And the question is also too general as to type of inquiry.

Mr. Avakian: It is the same point, your Honor, as to the adequacy of the records.

The Court: Objection is sustained.

Mr. Avakian: Your Honor, could I be heard on that?

The Court: No.

Mr. Avakian: Your Honor has permitted the prosecution witness to say the records are inadequate——

The Court (Interceding): The ruling will stand.

Mr. Avakian: Well, your Honor, I am forced then to make an offer of proof in order to make our offer of proof in connection——

The Court: Very well.

Mr. Avakian: I would like to make it in [2900] conjunction with the next recess, so as to avoid any unnecessary inconvenience to the jury.

(Testimony of Lawrence J. Semenza.)

The Court: All right.

Mr. Avakian: I request whenever your Honor suggests at the close of the next recess.

The Court: You call my attention and whenever you want to make your offer of proof, I will ask the jury to leave the court room.

Q. Mr. Semenza, in connection with the books and records and returns of the Menlo Club, you have testified on cross-examination that the records of the Menlo Club were maintained on the accrual basis of accounting rather than on the cash receipts and disbursements basis, and you were asked whether it was your understanding that, under the code and the regulations it was up to the taxpayer to elect whether to be on the cash or accrual basis. What is your understanding in that respect?

A. It is my understanding that the taxpayer must report on the basis on which he maintains his records. If he maintains them on the accrual basis, he reports on the accrual basis; if he maintains them on the cash basis, he reports on the cash basis.

Q. And on what basis were the Menlo Club books maintained?      A. The accrual basis.

Q. Have you examined Mr. Weaver's exhibit with respect to the [2901] Menlo Club, which I believe is Exhibit 165?      A. I have.

Q. Was that exhibit prepared on the cash basis or the accrual basis?

A. It was prepared on the cash basis.

Q. And did it omit liabilities which on the accrual method should properly have been included?



(Testimony of Lawrence J. Semenza.)

A. It did.

Q. What was the amount of liabilities omitted from Mr. Weaver's exhibit at the end of each of the years 1945 and 1946?

A. At the end of 1945 it is \$26,464.18; the end of 1946 it is \$17,264.58.

Q. Now you were also asked whether the records of the Menlo Club contained a record of accounts payable and you were directed to answer that question yes or no and your answer was no. Do you have any further explanation to offer in connection with that answer?

A. I have. Included in cash disbursements record I was able to determine the accounts payable, which I have previously stated amounts, \$26,464.18 and \$17,264.50. Regardless of whether they were shown in the accounts payable, if I find them there I gave consideration to them in my statement.

Q. Let me see if I get this right. Was there a ledger card designated accounts payable in existence? A. There was not. [2902]

Q. But was there the information contained in the books themselves showing the existence and the amount of the accounts payable?

A. There was.

Q. And that is what you used; is that right?

A. I did.

Q. Now in connection with Mr. Remmer's equity in the Menlo Club, as set forth both on page 2 and on page 13 of your Exhibit M-1 your attention was called to the capital account of Elmer Remmer

(Testimony of Lawrence J. Semenza.)

shown in the ledger of the Menlo Club. Do you have that ledger before you?

A. No, I do not.

Q. I will hand you prosecution's Exhibit 125, the Menlo Club ledger, and call your attention particularly to the page designated "Partner's Account, Elmer F. Remmer," and I will ask you whether the amount of Mr. Remmer's capital account, as shown on that page for the end of the year 1945, was lower or higher than the amount shown in your Exhibit M-1 as his capital account for that date? A. What date is that?

Q. The end of 1945. A. It is lower.

Q. And at the end of 1946 is the amount of Mr. Remmer's capital account, as shown in the book, lower or higher than the amount which you set forth in Exhibit M-1 as his capital account for the end of 1946? [2903]

A. It is lower in Exhibit 125.

Q. If you had used the capital account shown in the book for the end of 1946 instead of the figure which you used in Exhibit M-1 for that same date, by how much would Mr. Remmer's 1946 net worth be reduced?

Mr. Campbell: I suggest that is argumentative, leading and incompetent. Necessarily if you change the figure he would have to change on his chart.

Mr. Avakian: Your Honor, we are entitled to show what the difference would be. It carries inferences created by cross-examination.

The Court: You may answer.

(Testimony of Lawrence J. Semenza.)

A. The balance shown by the book December 31, 1946, is \$39,508.60, which does not include his share of the profits for the year 1946. If I used that figure, it would result in reduction of approximately \$74,000.

Q. And was his share of the 1946 profit credited to him during the following year?

A. It was, in the amount of \$45,923.11. If I add that amount to the balance shown in the records at December 31, 1946, his capital account would be approximately \$85,400. If I subtracted from the capital account in my report, page 13, Exhibit 125 would be approximately \$25,000 less than the balance I show.

Q. As a result of your making your own accounting analysis and determination of Mr. Remmer's capital account, rather than [2904] using the amount shown in the book, did you increase or decrease Mr. Remmer's net worth at the end of 1946?

Mr. Campbell: Objected to as argumentative, assuming facts not in evidence. The witness cannot increase or decrease. He can state what figures he found, but I suggest this question is argumentative, if the Court please.

The Court: Let me have the question.

(Question read.)

The Court: You may answer the question.

A. I increased it.

Q. And in computation of net income on the net worth method, does an increase in a closing net

(Testimony of Lawrence J. Semenza.)

worth result in an increase or decrease of income computed on the net worth method?

A. Results in a decrease.

Q. I do not know if you understood the question. Would you like to have it read?

Mr. Campbell: I object—the witness did not indicate he misunderstood.

The Court: Let him read it and see.

(Question read.)

A. Over the period it would result in an increase.

Q. By making your own analysis then, instead of using the figure in the book, did you reach a result which was favorable or unfavorable to the defendant in this case?

Mr. Campbell: That is objected to—— [2905]

The Court: Objection sustained.

Q. In connection with page 12 of Exhibit M-1, which is your analysis of the assets, liabilities and net worth of the Menlo Club, you were questioned on cross-examination regarding the item of improvements and replacements in 1946, which you stated were entered on the books as repairs and replacements but which you capitalized. First of all, let me ask you this, Mr. Semenza, on that item—what is the effect of capitalizing those items instead of treating them as repairs and replacements on income that is computed for that year?

A. It increases the income for the year.

Q. And will you state whether or not you have found it customary in your business as a certified

(Testimony of Lawrence J. Semenza.)

public accountant, that business men frequently deduct as a repair and replacement items which you, as an accountant, consider to be capital items?

A. I have found it very usual.

Q. In connection with your computation, as set forth on pages 14 and 15 of Exhibit M-1 of the amount of cash which you determined and concluded was drawn by Mr. Remmer in each of those two years, 1945 and 1946, your attention was called, on cross-examination, to certain exhibits and testimony. In making that analysis, did you also have in mind the testimony of the various witnesses and the partnership agreements introduced in evidence here, to the effect that Mr. Remmer was to draw out his \$175,000 investment in the Menlo Club before the other [2906] partners drew out their share of the profits? A. I did.

Q. And was that one of the reasons why you concluded that cash that was not otherwise disbursed should be charged to Mr. Remmer as drawing?

Mr. Campbell: Objected to as incompetent in that form.

The Court: It seems to me it is leading.

Mr. Avakian: Well, very well, it is leading, but I thought it would save time. Is the objection sustained, your Honor?

The Court: Yes.

Q. What effect did you give, Mr. Semenza, in testimony relating to that item?

(Testimony of Lawrence J. Semenza.)

Mr. Campbell: I think that is incompetent, if the Court please.

The Court: I think so. Objection sustained.

Q. Now you were also questioned on cross-examination regarding provision in Mr. Kyne's partnership agreement, that is, 15 per cent share of the profits was to be credited to his capital account and that he was not to become an owner of 15 per cent of the assets of the business until Mr. Remmer had withdrawn his 175 thousand dollar investment, and your answer, as I recall it, was that you gave effect to that provision and that this was usual in similar partnerships. Could you explain that further, Mr. Semenza? [2907]

A. It is usual in partnerships—I mean, I have found it in many partnerships—where one partner did not have the funds to supply the business as his share of the investment and the other partner in the enterprise would put up all the funds to begin with and the party not having the funds to invest to begin with allowed his earnings to accumulate until there was sufficient accumulation to cover his share of the investment.

Q. And what have you found in your experience in that type of partnership with respect to the drawings of the partner who supplied the initial investment?

Mr. Campbell: Objected to as incompetent.

The Court: Objection sustained.

Mr. Avakian: Your Honor, that is very important and we think we should be heard on it. May we be heard on it?

(Testimony of Lawrence J. Semenza.)

The Court: No, the ruling will stand.

Mr. Avakian: Well, I beg leave of the Court to hear me, your Honor, because it is being charged here the partnerships are fraudulent because of that point. Now if it is customary in partnerships of this kind to do just as was done here, that has bearing on the issue whether these are fraudulent partnerships.

Mr. Thompson: I object to counsel making up the government's argument. I think if he wants to argue points of law he should, but not make up the arguments of the government. [2908]

The Court: We will not hear any argument here. Let us proceed with the case.

Mr. Avakian: Your Honor is denying me permission to present my position?

The Court: Yes.

Mr. Avakian: Very well.

Q. I call your attention, Mr. Semenza, to Exhibits 146 and 188. Are they still before you?

A. They are not.

Mr. Thompson: May I suggest we take our afternoon recess?

The Court: Very well.

(Jury and alternate jurors admonished and recess taken at 2:45 p.m.)

3:00 P.M.

(Defendant present with counsel.)

(In the absence of the jury.)

RE: ACCOUNTING ANALYSIS

Febr. 13, 1952. Notebook No. 344 PP 57-63.)

The Court: Mr. Avakian, do you care to make an offer?

Mr. Avakian: I would like to make an offer of proof in respect to two points to which objections were sustained.

First, I would like to offer to prove that in making accounting analyses of the books and records of business enterprises it is usually necessary and customary for the accountant to make inquiry of the bookkeepers or other individuals familiar with the transactions and the bookkeeping entries, in order to determine the proper accounting treatment to be made of the entries and transactions.

That is my first offer of proof and perhaps your Honor would like to rule on that before I make the second.

The Court: What is your objection to that, Mr. Campbell or Mr. Thompson?

Mr. Thompson: We object that the offer of proof to be incompetent and immaterial in this case. Mr. Semenza has testified that his accounting analyses has been based upon the books and records in evidence and the testimony of witnesses and the rule of whether or in other instances where people are available to make inquiry of, he may make in-



quiry to determine the meaning of various entries, has nothing to do with this case.

The Court: What is your point?

Mr. Avakian: My point is in cross-examination questions were asked as to whether it was possible for Mr. Semenza to reach certain accounting conclusions on the basis of entries in the books and records alone, without recourse to the testimony of witnesses, and the implication of that, particularly in view of the fact that the prosecution's witnesses claim that the records were inadequate, and particularly in view of the rule of law that records must be shown to be inadequate before net worth method can be used, it is important, on the question of the adequacy of the records, to show that necessity to defer to the testimony of witnesses in interpreting any entries of the books, is not unusual, but rather is customary.

The Court: I will let you make that showing.

Mr. Campbell: Wouldn't this open the question of inquiry made of the principle here. The very general broad question, if it is proper to make inquiries of the bookkeepers and others, then the question would be if he had done so in reaching certain of these conclusions. Certainly then we would be entitled to know whom, which would include the principle in this case.

Mr. Avakian: Mr. Campbell misunderstands my point completely. Mr. Semenza has testified that he based his analysis on the books and records of this case and also on the testimony of witnesses in this case. The implication of the cross-examination

questions and of the testimony of the prosecution witnesses is that the books and records which are here in evidence are inadequate because Mr. Semenza had to refer to something besides books and records, namely, the testimony of witnesses who testified, in order to reach his conclusions, and I want to negative any implication that his resort to the testimony of witnesses who testified shows the inadequacy of the books, by showing that it is customary in accounting practice in analyzing any set of books to make inquiries and not to limit themselves to the entries themselves, but to make inquiries of bookkeepers, such as the bookkeeper who testified here and whose testimony he relied on.

The Court: The question is whether or not the books were inadequate.

Mr. Avakian: That is the issue.

The Court: Can you ask him that?

Mr. Avakian: I wanted to make a direct point of his recourse to testimony of the witnesses.

The Court: You could ask him that question, if that is the question.

Mr. Campbell: I do not believe that is the question, because he does not say in making your analysis did you refer to the books and testimony in evidence here. He says, is it the customary practice, or the usual practice among bookkeepers or among accountants, is it the usual practice to make inquiries of bookkeepers and others familiar with the transactions, which takes in a large field outside of the record of this case and I believe it opens up the question of whether it is the usual and

customary practice to make inquiry of the principle by whom he is engaged and the nature of the information he obtained.

The Court: Well, that being so, if that is the answer to the offer and if there is a question in the case as to whether or not these books are adequate, I think he could inquire of his witness, his expert witness, as to whether or not, in his opinion, they were adequate.

Mr. Campbell: I agree, your Honor.

The Court: I think that would cover the point, rather than have this general question propounded and answered.

Mr. Avakian: If your Honor will permit me to ask the question you have just indicated, I would like to ask that question, but in addition I would also like to ask the question covered by the offer of proof.

The Court: I will permit the question just suggested, but will deny the offer of proof.

Mr. Avakian: Thank you, your Honor.

The second offer of proof is this point—we offer to prove that in a situation of partnerships, where one of the partners provides the initial investment and the other partners put in their share by accumulation in their capital accounts of their share of the profits, it is customary for the investing partner to draw more than his share of the profits until the capital accounts of the partners have been adjusted in proportion with their respective partnerships and percentages in the profits.

The Court: What is your objection to that?

Mr. Campbell: That is objected to as incompetent and immaterial here, what is customary. Here we are interested in ultimate facts of this particular case and not as to comparing it to customs. The question, of course, would by implication include a great many factors, including a contractual relationship amongst partners in the customary partnership which he refers to. Here we have certain specific purported agreements, we have a vast mass of evidence which has been considered specifically by this witness, and I do not believe it is material to the determination of the issues here as to what may be customary in certain types of partnerships.

The Court: Couldn't that situation be met by basing your question upon the exact agreements in evidence here?

Mr. Avakian: Your Honor, there is no question as to the agreements, as to the fact that Mr. Remmer put up the investment, and as to the fact that the partners built up equities through credits to their capital interests, and as to the fact Mr. Remmer withdrew more than his share of the profits.

The implications arose by questions which the prosecution attorneys have asked of numerous witnesses as to the fact that the partners were building up their equities, did not withdraw their full share, and as to the fact, as shown by the evidence, that Mr. Remmer did, in many instances, withdraw more than his share of the profits. The implication is that because of that fact there is something fraudulent in these partnerships. Now in determining whether that indicated fraud, it is proper to

have before the jury information as to whether exactly that situation is customary in the business world, because in trying to decide whether to infer fraud or not, the jury should have before it the question of whether what was done here was different or unusual in comparison with the regular treatment in the business world of this type of partnership situation. That is why we think this is very material, your Honor.

Mr. Campbell: It seems to me we are going into a very large field of opinion evidence on the part of this witness, which could not be compressed into a simple question by any means to make a comparable situation, and it is a matter also, it seems to me, that should be for argument to the jury and not attempted presentation of this man.

Mr. Avakian: How can you ask what was done here is the same thing as done in the business world unless you can consider it in the record.

The Court: Isn't it obvious if the agreements here show investment of a certain man and other parties are to acquire interests from the profits, wouldn't it be obvious, in the matter of observation from the agreement itself, that a partner who made an initial investment would be entitled to take out all or any part of the original investment at any time that the business would permit?

Mr. Avakian: Well, your Honor, that seems obvious to me, but I wondered whether there was some vagueness because I don't understand why we should have been here two and a half months if that is obvious, because it is becoming apparent this en-

tire case is boiling down to the question as to whether the partnerships are frauds and the only attack we can see is that Mr. Remmer, who put up the investment, drew more heavily on his percentage and the other partners drew less than their percentage and permitted the difference to accumulate. I assume from the fact we have been here so long that the prosecution does not agree with your Honor's views.

Mr. Campbell: We do not feel we could argue the case at this time. I disagree with counsel at every turn of what he states the evidence here to show. However, I think the matter here is before the Court not offer of proof, but of asking a question, the question being whether or not in partnerships, where one partner furnishes the capital, it is customary for that partner to draw more than the other partner did, and I submit it is an incompetent question and immaterial to our inquiry and not a subject of expert accounting testimony.

Mr. Avakian: I think it is certainly within the scope of experience of an accountant. He has testified he has great familiarity with just this type of partnership situation.

The Court: I will permit the question.

Mr. Avakian: Thank you, your Honor.

3:15 P.M.

(Defendant present in court.)

(Presence of the jury and alternate jurors stipulated.)

**MR. SEMENZA**

resumes the witness stand on further

Redirect Examination

By Mr. Avakian:

Q. Mr. Semenza, based upon your experience as a certified public accountant, and based upon your examination of the books and records of the various enterprises, to the extent that [2909] they have been introduced in evidence here, would you state whether or not those books and records are adequate for the determination of the net income of those enterprises?      A. They are.

Q. Now, Mr. Semenza, directing your attention to the situation in which one partner puts up the investment for a partnership business and the partner or partners agree to pay for their share of the investment by permitting their share of the profits to accumulate in their capital accounts, and they further agree that the partner who has put up the investment shall withdraw his investment before the other partners draw, would you state what you have found to be customary, in your accounting practice, with respect to the drawings of the partner who made the initial investment?

Mr. Campbell: I did not understand that to be



(Testimony of Lawrence J. Semenza.)

the question: I thought there was to be a specific question as to whether or not in such case the partner putting up the capital would then withdraw more than the others.

Mr. Avakian: I am trying to avoid a leading question. I will ask him the way counsel suggests.

Q. Do you recall the factual situation I outlined in my question? A. Yes.

Q. I will not repeat that then. Is it customary in that type of situation, Mr. Semenza, for the partner who puts up the [2910] investment to withdraw his investment before the other partners make their withdrawals? A. Yes.

Mr. Avakian: No further questions.

Mr. Thompson: We have no further questions of Mr. Semenza, your Honor.

The Court: Mr. Semenza, you may be excused now.

Mr. Gillen: May it please the Court, the defense rests its case.

#### Rebuttal Testimony

ROBERT W. MORGAN

having been previously sworn, testified as follows:

#### Direct Examination

By Mr. Campbell:

Q. Mr. Morgan, I believe you identified yourself as a certified public accountant and presently engaged as a revenue agent, is that correct?



(Testimony of Robert W. Morgan.)

A. I did.

Q. And you further identified yourself as having taken part in the investigations in this particular case? A. That is right.

Q. Now, Mr. Morgan, will you answer this yes or no—did you, on or about the 8th day of April, 1948, have occasion to go to the law offices of Woodburn, Thatcher and Forman? A. I did. [2911]

Q. And who, if any one, was present with you on that occasion?

A. There was Revenue Agents Weaver and Harkness.

Q. By Revenue Agent Weaver, do you mean Special Agent Weaver?

A. Yes, sir, and a stenographer from the office of the Collector of Internal Revenue at Reno, Nevada.

Q. Did you know her name at that time?

A. I did at that time. I have since forgotten it.

Q. You do not recall her name at this time?

A. No, sir.

Q. Was any one else with you on that occasion; that is to say, that went with you to the offices of Woodburn, Thatcher and Forman?

A. No, sir.

Q. Will you state whether or not your going there on that occasion was by reason of a prior appointment? A. That is correct.

Q. And do you recall at that time, to the best of your recollection, what time of day it was that you went to that office?

(Testimony of Robert W. Morgan.)

A. I wouldn't state definitely, but I believe it was in the early afternoon.

Q. What is your recollection as to the time originally set for your appointment there on that date?

A. My recollection is that the previous day I called Mr. Woodburn to arrange a time——

Q. Don't relate the conversation, but details had been [2912] arranged the previous day?

A. Correct.

Q. And with whom?

A. With Mr. Woodburn.

Q. Do you know which Mr. Woodburn? I believe the evidence shows more than one Woodburn.

A. I was not aware that there were two individuals at the time.

Q. And as a result of your conversation with Mr. Woodburn, was the appointment originally fixed?

A. That is correct.

Q. And for what hour, if you recall?

A. As I recall, he first suggested we meet at approximately 10 o'clock in the morning.

Q. Did you have a subsequent conversation with any one, whereby the time of the appointment was changed?

A. That is correct.

Q. With whom, if you recall?

A. As I recall, Mr. Woodburn called me later in the day, I believe at my hotel, and suggested a delay of a few hours.

Q. At any rate, the following day you and Mr. Weaver and Mr. Harkness and this young lady

(Testimony of Robert W. Morgan.)

went to those offices?      A. That is correct.

Q. Prior to going there, who was your appointment with, as you understood? [2913]

Mr. Avakian: Is this calling for hearsay?

Mr. Campbell: Well, I will strike that.

Q. You say you arrived at the office early in the afternoon. Whom did you see there?

A. We were ushered into the office of Mr. Thatcher.

Q. To what Mr. Thatcher do you refer?

A. We call him Jack Thatcher, John P. Thatcher, I believe is his name.

Q. Who was ushered in there—you say “we” were.

A. Well, the revenue agents I have mentioned, together with the young lady from the Collector’s office, and we proceeded to Mr. Thatcher’s office.

Q. Relate just what occurred there?

A. Mr. Thatcher, as I recall, asked us first why we were there and we told him it was——

Q. Pardon me—well, just go right ahead.

A. I told Mr. Thatcher——

Mr. Gillen: I think it would be hearsay to relate what was said there.

Mr. Campbell: I started to stop him, I anticipated there might be such an objection.

Q. Will you state, Mr. Morgan, whether or not you have ever met the defendant, Elmer Remmer?

A. I met him at that conference, yes, sir.

Q. By that conference, are you referring to the

(Testimony of Robert W. Morgan.)

same occasion [2914] to which you have been testifying here?      A. That is correct.

Q. Were you present here in the court room when Mr. Thatcher testified?      A. No, sir.

Q. Was Mr. Remmer in the room, if you recall, when you entered Mr. Thatcher's office, or whatever office it was there that you said Special Agent Weaver and Revenue Agent Harkness and the young lady entered?

A. You say was Mr. Remmer there?

Q. At the time you entered the room?

A. No, sir, he was not.

Q. How soon after you entered the room on that day did you see him?

A. We had a discussion——

Q. You can't state what was said.

A. No, I am just trying to refer to the time. I judge maybe 15 or 20 minutes. We had a preliminary discussion.

Q. Then what occurred?

A. Then Mr. Thatcher called Mr. Remmer into the room and he introduced all of us present to him.

Q. Had you yourself ever met Mr. Remmer prior to that occasion?      A. No, sir.

Q. And were you introduced to him on that occasion?      A. That is correct. [2915]

Q. What occurred after Mr. Remmer came into the room, if you know?

A. To the best of my recollection that was approximately the end of the interview.

(Testimony of Robert W. Morgan.)

Q. Was anything said or anything done at that time?

A. Mr. Thatcher announced that he did not wish to have Mr. Remmer interviewed by the agents and he gave each of us a typewritten statement.

Q. Was that in Mr. Remmer's presence, do you recall?

A. I can not recall whether that statement was given to us prior to the time Mr. Remmer entered the room or following.

Q. I show you Exhibit G-1 and ask you if you have ever seen this, or a duplicate copy of this, Mr. Morgan?

A. Yes, sir, this is copy of the statement that Mr. Thatcher gave to us.

Q. On that occasion? A. On that occasion.

Q. Now had you ever seen Mr. Remmer prior to that occasion? A. No, sir.

Q. Had you ever met him or been introduced to him prior to that occasion? A. I had not.

Q. Do you recall whether the young lady from the Collector's office, that you refer to as having gone there with you, was in the room throughout the interview? [2916]

A. To the best of my recollection she was.

Q. Now in connection with that interview, who was in charge of the group of agents, Mr. Morgan?

A. Mr. Weaver.

Q. As Special Agent in charge of the investigation? A. That is correct.

Mr. Campbell: You may cross-examine.

Mr. Gillen: No cross-examination of Mr. Morgan.

(Witness excused.)

LYNN HARKNESS

having been previously sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. You have previously been sworn here, Mr. Harkness? A. Yes, sir.

Q. And identified yourself as an agent of the Bureau of Internal Revenue? A. Yes, sir.

Q. And engaged in the conduct of the investigation of this case? A. That's right.

Q. You have heard the testimony of Mr. Morgan who immediately preceded you to the stand?

A. I did.

Q. And will you state whether or not you were present on the occasion on or about April 8, 1948, referred to? [2917] A. I was.

Q. And will you state whether or not your recollection of the events coincides with his, or if not, will you state in what particulars it does not?

A. It coincides.

Q. Are there any particulars in which it does not coincide? A. I do not recall any.

Q. Now with relation to the young lady who was present, do you recall her name?

A. No, I do not recall her name.

Q. Have you since learned her name?

A. Yes.

(Testimony of Lynn Harkness.)

Q. What is it?

A. Her name is—I forget the last name—I believe Helen Springer.

Q. And she was or is employed in what office?

A. Collector of Internal Revenue office in Reno.

Q. Were you present in court when Mr. Thatcher testified? A. I was.

Q. Was that the same Mr. Thatcher that you saw on the occasion of that visit? A. It was.

Q. Had you ever met Mr. Remmer prior to that visit? A. No, sir.

Q. That was the first time you were ever introduced to him? [2918] A. Yes.

Q. And you recognize him as the same man who is on trial here? A. Yes.

Q. In relation to the young lady who was with you on that occasion, do you recall how long she was present, or if she remained throughout the interview?

A. I am not definite about that, but I recall that she left—I believe she left before we did.

Mr. Campbell: You may cross-examine.

Mr. Gillen: I just want to make an inquiry of counsel, or stipulate—there was an answer given to a rather unusual question as to whether Mr. Harkness' recollection of the incident on April 8, 1948, coincides with his and he said it coincides with his.

Mr. Campbell: Coincides with the testimony given on the stand by Mr. Morgan.

Mr. Gillen: Yes, that is what I wanted to get straightened out. There are no questions.

(Jury and alternate jurors admonished and recess taken at 3:35 p.m.) [2919]

Thursday, February 14, 1952, 10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

**MRS. HELEN SPRINGER**

a witness for the plaintiff, being duly sworn, testified on rebuttal as follows:

**Direct Examination**

By Mr. Campbell:

Q. Will you state your name?

A. Helen Springer.

Q. Where do you reside, Mrs. Springer?

A. I live in Sparks, Nevada.

Q. How long have you been a resident of Nevada?

A. Since 1906.

Q. What is your present occupation, Mrs. Springer?

A. Clerk for the Internal Revenue Bureau.

Q. In what Bureau or Department?

A. Field Division.

Q. Of the Collector's office?

A. Yes, sir.

Q. How long have you been attached to the Collector's office as a clerk?

A. Over four years.

Q. Prior to that time you were in private employment?

A. I worked for the Southern Pacific Railway.



(Testimony of Mrs. Helen Springer.)

Q. Incidentally, now or at any time during that employment, [2920] has a part of your duties been that of stenographic work? A. Yes, sir.

Q. Referring to the month of April, 1948, did you have occasion to go to the office of an attorney by the name of Thatcher? A. Yes, sir.

Q. And with whom did you go to that office?

A. Three revenue agents from San Francisco.

Q. Do you recall their names?

A. I recall the name of one of them, Mr. Harkness.

Q. Do you recall the names of the other two?

A. No, I do not.

Q. You were introduced to them at the time, were you? A. Yes, sir.

Q. On whose instructions did you accompany them?

A. The Assistant Collector, Mr. Forrester.

Q. That is Mr. Homer Forrester?

A. Yes, sir.

Q. Now I will ask you if on any occasion you have met the defendant, Elmer Remmer?

A. Yes, sir.

Q. When did you meet him?

A. In Mr. Thatcher's office the morning I went there with the agents.

Q. That was on the same occasion, was it?

A. Yes, sir. [2921]

Q. And when you arrived at Mr. Thatcher's office, did you enter that office with the agents?

A. Yes, sir.

(Testimony of Mrs. Helen Springer.)

Q. And who was present at that time?

A. Mr. Thatcher was in the office at that time.

Q. Now you say it was on that occasion you met Mr. Remmer. When did he enter the room, to the best of your recollection?

Mr. Gillen: Just a moment—that is assuming something not in evidence. She did not say he entered the room.

The Court: Will you reframe your question.

Q. You previously testified it was on that occasion that you met Mr. Remmer? A. Yes, sir.

Q. Was he in that room when you entered the office? A. No, sir.

Q. Did he subsequently come into the room?

A. Almost immediately after.

Q. Were you introduced to him on that occasion? A. Yes, sir.

Q. Now was there a conversation had at that time?

A. Well, when we entered the room one of the agents introduced himself and the other two agents to Mr. Thatcher.

Q. After Mr. Remmer entered the room?

A. After Mr. Remmer entered the room. Mr. Thatcher introduced him to all of us. [2922]

Q. Did anything take place at that time?

A. Almost immediately after that a lady came into the office and presented each one of us with a letter.

Q. Were you presented with a copy of that letter? A. Yes, sir.

(Testimony of Mrs. Helen Springer.)

Q. What, if anything, did you do with the copy that was presented to you?

A. I don't remember, but I don't believe I ever took it out of Mr. Thatcher's office with me.

Q. I am going to show you Exhibit G-1 and ask you to read it over, if you will. Do you recognize that document as being a copy of a document you have seen before?

A. Well, yes, I believe that is the letter I read that morning.

Q. When did you leave Mr. Thatcher's office on that occasion, Mrs. Springer; that is, with relation to the time you met Mr. Remmer and you were shown a copy of this document?

A. Well, after reading that letter one of the agents told me that in view of that letter that I could be excused.

Q. And did you leave at that time?

A. And I left right after that.

Q. Is that the only occasion upon which you ever met Mr. Remmer?

A. Yes, sir.

Q. Prior to going there on that occasion, did you know the name of the man whom you were to meet? [2923]

A. No, sir.

Q. At the time of your introduction was the first time you had heard his name?

A. Yes, after I reached Mr. Thatcher's office is the first time.

Mr. Campbell: You may cross-examine.

(Testimony of Mrs. Helen Springer.)

Cross-Examination

By Mr. Gillen:

Q. I understand you to say your name was Mrs. Springer? A. Yes, sir.

Q. Mrs. Springer, when did you go to work for the Collector of the Nevada District?

A. The first working day after January 1, 1948.

Q. Between January 1, 1948, and April 8, 1948, on how many occasions did you go out with revenue agents or other attaches of the government for the purpose of taking any statements?

A. This was my first time.

Q. How many times since then have you gone out with revenue agents or other attaches of the government to take statements?

A. Well, I wouldn't remember, but it has been several.

Q. Well, more than 20 times?

A. Well, perhaps 15 or 20.

Q. How many times did you go to the office of Thatcher & Woodburn after April 8th?

A. I was only in the office that once.

Q. How many other lawyer's offices have you gone to to take [2924] statements from taxpayers?

A. I have never gone to any other lawyer's office.

Q. When did you first learn that you were going to testify in this case? A. Yesterday.

Q. Who was it that imparted that information to you?

(Testimony of Mrs. Helen Springer.)

A. The United States Attorney's office at Reno.

Q. What particular member of the United States Attorney's office?

A. I don't know the name of the party, but it was Mr. Thompson's representative.

Q. Was it in person or by telephone?

A. Telephone.

Q. Did you recall the incident immediately or was it recalled to you?

A. No, I recalled the incident.

Q. And were you told anything by other persons who had been present at that meeting in Mr. Thatcher's office and who had previously testified?

A. I don't understand your question.

Q. I say were you informed that other persons who were present with you in Mr. Thatcher's office on April 8th had testified in the case?

A. No, I wasn't given any information.

Q. Were you asked what you recalled about that incident? [2925]

A. Yes.

Q. Were you reminded of anything by the person who talked to you?

A. No, sir.

Q. You were not reminded of anything?

A. No.

Q. Do you recall how Mr. Remmer was dressed on that occasion?

A. No, I don't believe I do.

Q. Do you recall what kind of shoes he wore?

A. No, sir.

Q. Was there anything unusual about his ap-

(Testimony of Mrs. Helen Springer.)

pearance in the manner of dress to you on that occasion?      A. Nothing unusual.

Q. Before you were talked to yesterday on the telephone and notified that you were to testify in this case, did anybody prior to that time talk to you about the incident of being in Mr. Thatcher's office on April 8, 1948?

A. I was asked once previously, yes. I remember the circumstances.

Q. By whom were you asked?

A. Mr. Harkness.

Q. When was that?

A. Oh, perhaps ten days ago.

Q. And did he recount to you what he recalled about the matter?      A. No, sir. [2926]

Q. He didn't tell you what he remembered about it at all?      A. No, sir.

Q. Did you tell him what you remembered about it?      A. Yes, sir.

Q. And did he correct you or take issue with you on your recollection of the matter at all?

A. He did not.

Q. Now Mrs. Springer, it is your testimony here now that you have a distinct recollection of this particular incident in Mr. Thatcher's office, although since that time you have been on 15 or 20 other calls outside of your office, is that correct?

A. Yes, sir.

Q. Do you recall what the purposes were of any other calls that you made outside of your office?

A. To obtain statements from taxpayers—

(Testimony of Mrs. Helen Springer.)

Mr. Campbell: Objected to as immaterial.

The Court: It is already answered.

Q. Do you recall whose offices you went to to obtain statements from taxpayers?

Mr. Campbell: Objected to as incompetent and immaterial.

The Court: Objection sustained.

Mr. Gillen: It is perfectly proper cross-examination for the purpose of testing the recollection of a person who recalls an isolated incident. [2927]

The Court: I will permit the question.

A. In each case I went to the Revenue Agent's office.

Q. I do not quite understand that—you went from your own office to a different office?

A. Yes, sir.

Q. I asked you about how many other occasions you left your office to take a statement or carry on some duty you were assigned to outside of your office?

A. On each occasion when I have taken statement from a taxpayer it has been at the Revenue Agent's office.

Q. You never went outside the Revenue Agent's office or your own office?

Mr. Campbell: Objected to as misleading. It is a matter of common knowledge the two offices are in the same building.

Mr. Gillen: That is not common knowledge to me. That is why I am inquiring.

(Testimony of Mrs. Helen Springer.)

Q. Your particular office is what office and located where?

A. On the second floor of the Postoffice Building at Reno.

Q. And the Revenue office that you refer to is located where?

A. The Clay Peters Building, between First and Second on Virginia.

Q. You are not sure where it is?

A. Oh, yes, I know where it is. I don't know the number of the office. [2928]

Q. Do you know the name of the building?

A. The Clay Peters Building.

Q. You are sure of that? A. Yes, sir.

Q. Can you recall the names of any taxpayers whose statements you took 15 or 20 other times?

Mr. Campbell: Objected to as incompetent and calling for disclosure of confidential information.

The Court: Yes. Objection sustained.

Q. Do you remember of any agents you went with to take those 15 or 20 statements in the Revenue office?

A. Yes, a Mr. Thurman from Sacramento.

Q. When was that that you went with Mr. Thurman to take statement at the Revenue office?

A. I don't remember.

Q. Can you tell us what fixes it in your mind that you went over to Mr. Thatcher's office on April 8, 1948?

A. Yes, sir. I had been working for the Wage and Excess Tax Division and they loaned me to the



(Testimony of Mrs. Helen Springer.)

Audit Section because they had several income tax returns that they wanted processed before April 15th and I don't remember that the date was April 8th, but I do remember it was some time before the 15th of April.

Q. How many other statements did you take between April 8th and April 15th? [2929]

A. I didn't take any.

Q. You didn't take any statements from anybody at all, is that correct?

A. No, sir.

Q. You didn't take any statements at all?

A. No, sir.

Q. How recent was this occasion that you went with Mr. Thurman of Sacramento to take a statement?

A. Well, I wouldn't remember. I have taken statements for Mr. Thurman on two or three occasions and I have taken statements for Mr. Kimmel on two or three occasions, but I wouldn't remember the dates.

Q. Do you remember the year?

A. Well, the last one was probably four months ago.

Q. Probably four months ago—you are not sure of that?

A. Well, it was last fall.

Q. Do you remember the first time you took a statement with Mr. Thurman from Sacramento, what year?

A. No, I wouldn't remember.

Q. But you did have a specific recollection, without being aided by anybody refreshing your mem-

(Testimony of Mrs. Helen Springer.)

ory, that it was in 1948 that you went to Mr. Thatcher's office?      A. Yes, sir.

Q. Now can you describe Mr. Thatcher's office? Let me break it down this way. Can you describe Mr. Thatcher's office as [2930] you entered the office suite?

A. As I remember it, after getting off the elevator we passed the girl at the telephone switchboard and turned to the right, and I believe his office faces on Second Street, on the second floor of the building.

Q. Was there any delay from the time you arrived in the reception room until you got into Mr. Thatcher's office?

A. Practically none. I don't remember any delay.

Q. You do not recall any delay?

A. No, sir.

Q. And you do not recall the name of any of the agents who went with you excepting Mr. Harkness?      A. No, sir.

Q. And the reason you remember Mr. Harkness is ten days ago Mr. Harkness talked to you about this incident?

A. Well, I have seen Mr. Harkness in the Collector's office on occasions since then.

Q. Isn't it a fact the reason Mr. Harkness was the only agent you remember is because he talked to you ten days ago and told you you would probably have to testify?

(Testimony of Mrs. Helen Springer.)

A. Mr. Harkness did not tell me I would have to testify.

Q. And Mr. Harkness asked you if you remembered the incident? A. Yes, sir.

Q. And you recited what you [2931] remembered? A. Yes, sir.

Q. And Mr. Harkness didn't say anything about the incident to you? A. That's right.

Q. Do you know a revenue agent by the name of Ray Weaver?

A. No. The name is very familiar.

Q. I shouldn't call him revenue agent, I believe I should have called him a Special Agent.

A. No. The name is familiar but I don't know him.

Q. What time of day was this?

A. It was in the morning.

Q. Can you fix the approximate time in the morning?

A. Well, I believe at the time Mr. Forrester told me to come to his office he told me to be there before ten o'clock.

Q. Are you sure it wasn't two o'clock in the afternoon? A. No, sir, it was morning.

Q. You are positive it was morning?

A. Positive.

Q. And you are equally positive it wasn't two o'clock in the afternoon? A. Positive.

Q. Now reading from page 2193 of the transcript, I am going to read to you, Mrs. Springer, testimony given here by Special Agent Ray Weaver

(Testimony of Mrs. Helen Springer.)  
during the course of this trial, and I will advise you that Mr. Ray Weaver has been identified here as the [2932] man who was in charge of this particular investigation, and reading from——

Mr. Campbell: I am going to object to reading testimony of one witness to another witness, if the Court please.

Mr. Gillen: Why yesterday Mr. Campbell asked——

The Court (Interceding): It doesn't make any difference what somebody did yesterday or did today; the question is this present situation.

Mr. Gillen: We have different rules for different sides, I presume.

The Court: You do not infer I have different rules for different sides?

Mr. Gillen: Mr. Campbell——

The Court (Interceding): Please answer—do I understand you to infer I have different rules for different sides?

Mr. Gillen: No, I say I don't believe we have but Mr. Campbell seemed to believe we did.

The Court: There is nothing here involving Mr. Campbell whatever. We should address ourselves to the objection.

Mr. Gillen: Very well, there is an objection before your Honor.

The Court: Objection will be sustained.

Mr. Gillen: Now may I point out to your Honor that cross-examination [2933] of a witness who pretends to relate an incident that occurred, I can

(Testimony of Mrs. Helen Springer.)

properly read—and this is fundamental in cross-examination—I can read that witness testimony of another witness who was present at the same time and would have ostensibly observed the same thing, and ask that witness if this wasn't what happened and if there were three witnesses present, I can read all three witnesses' versions and ask if that wasn't the way it was.

The Court: I have an idea it is proper for the jury to decide whether certain witnesses' testimony is to be credited or not. The thought I have in mind is that what you are about to do is to ask this witness to pass on the credibility and integrity of the witness Weaver. That is my purpose in making the ruling.

Mr. Gillen: May I point out to your Honor the reason this may be done is that it might refresh the recollection of the witness under cross-examination and direct her attention——

The Court: You may read it, go ahead, but I still feel that this witness is not to pass upon the credibility of any other witness' testimony.

Mr. Gillen: Hearing what another witness testified to might refresh her recollection or she might adopt his theory.

The Court: All right.

Mr. Gillen: I will reframe the question. [2934]

Q. Mrs. Springer, I am going to read you from page 2193 of the transcript, commencing at line 15 of that page. I am going to advise you that this is the testimony of Mr. Ray Weaver, who has been

(Testimony of Mrs. Helen Springer.)

identified here as the agent in charge of the investigation and present at the incident related by you in Mr. Thatcher's office on April 8, 1948, and ask you if this refreshes your recollection as to what occurred at that time. Mr. Weaver was asked:

"Q. Was Mr. Remmer present in the room when you and your associates entered Mr. Thatcher's office? A. Yes.

"Q. Was anyone else beside himself and Mr. Thatcher present? A. Not that I recall.

"Q. Will you state again who was with you besides the stenographer, what other agents?

"A. Mr. Morgan, Mr. Harkness and myself."

Now was that, or was that not, the fact, namely, that when you went in the room with the three agents that Mr. Remmer was present with Mr. Thatcher?

Mr. Campbell: That is objected to because that is asking to directly pass upon the testimony of another witness. She can state what the fact is; if it refreshes her recollection that is different, she can so state.

The Court: I think so. Objection [2935] sustained.

Mr. Gillen: Your Honor will recall Mr. Thatcher was asked——

The Court (Interceding): I never heard of any rule that permits one witness to pass upon the credibility of another, on cross-examination or direct; I have never been advised of such a rule.

(Testimony of Mrs. Helen Springer.)

Q. Does that refresh your recollection that when you went in the room with the three agents, Mr. Remmer was present with Mr. Thatcher?

A. I do not remember anyone but Mr. Thatcher being there when we entered the room.

Q. So it is your present recollection Mr. Thatcher was there alone?

A. That is the way I recall, yes.

Q. Now do you recall how long the interview between the persons present lasted, approximately?

A. Outside of the introduction——

Mr. Campbell: While she was present.

Mr. Gillen: Of course while she was present. I am talking about while you were present.

A. It was a very short time. After we went into the office one agent introduced himself and the others, Mr. Remmer came almost immediately into the room and Mr. Thatcher introduced him. Then after this letter was given to us, we had time to read that, I was dismissed. [2936]

Q. There was practically no conversation in your presence?

A. There was no conversation outside the introductions.

Q. Then as I understand your testimony, almost immediately after you arrived in the office with the agents and were introduced to Mr. Thatcher, Mr. Remmer arrived, is that correct? A. Yes.

Q. And immediately Mr. Thatcher introduced Mr. Remmer to all of you? A. Yes, sir.

(Testimony of Mrs. Helen Springer.)

Q. And then almost immediately on the heels of that some young lady came in with these papers, one of which was handed to each of you?

A. Yes, sir.

Q. And then immediately after that you were excused? A. Yes, sir.

Q. Now I am going to read to you from page 2916 of the transcript and I will advise you that this is testimony which was given here yesterday by Mr. Robert Morgan, the government agent, and ask you if this refreshes your recollection—this is from line 23:

“Q. Do you recall whether the young lady——”

I will state that refers to you:

“——the young lady from the Collector's office, that you refer to as having gone there with you, was in the room throughout the interview? [2937]

“A. To the best of my recollection she was.”

Does that refresh your recollection that you remained in the room with the agents throughout the entire interview had there with Mr. Remmer and Mr. Thatcher?

A. No, I was excused. At the time the agent told me I could leave, I wondered if he wanted me to wait outside until they discussed matters, but he told me I could go back to my own office.

Q. Do you recall before the arrival of Mr. Remmer in the room, as you stated he did enter the room, whether or not there was any discussion regarding the purpose of your visit, any discussion



(Testimony of Mrs. Helen Springer.)

with Mr. Thatcher?      A. I believe not.

Q. Do you recall whether or not Mr. Thatcher asked the agents, or any of the agents, in your presence, what was the purpose of their visit and what particular thing they were inquiring into regarding Mr. Remmer's income tax affairs?

A. No, we seemed to be expected there.

Q. So it is your testimony that you recollect no conversation at all about the purpose of your visit?

A. No, sir.

Q. Now would you say that the agents, in your presence, had talked with Mr. Thatcher for a period of 15 or 20 minutes before Mr. Remmer came into the room?      A. Not in my presence, no. [2938]

Q. It is still your recollection that Mr. Remmer came into the room almost immediately on the heels of the introduction, is that correct?

A. Yes.

Q. When I say "introduction," I mean the introduction of you and the representatives of the government to Mr. Thatcher.      A. Yes, sir.

Q. Reading from page 2915 of the transcript—and this is the testimony of Mr. Robert Morgan still, commencing at line 6 of that page, Mr. Morgan was asked these questions and gave these answers:

"Q. Was Mr. Remmer in the room, if you recall, when you entered Mr. Thatcher's office, or whatever office it was there that you said Special Agent Weaver and Revenue Agent Harkness and the young lady entered?"

(Testimony of Mrs. Helen Springer.)

The young lady refers to you again, as the person accompanying the agents:

"A. You say was Mr. Remmer there?

"Q. At the time you entered the room?

"A. No, sir, he was not.

"Q. How soon after you entered the room on that day did you see him?

"A. We had a discussion——

"Q. You can't state what was said. [2939]

"A. No, I am just trying to refer to the time. I judge maybe 15 or 20 minutes. We had a preliminary discussion.

"Q. Then what occurred?

"A. Then Mr. Thatcher called Mr. Remmer into the room and he introduced all of us present to him."

Q. Now does that refresh your recollection that that was what happened instead of——

A. No.

Mr. Campbell: Just a minute—I object to the question in that form. I don't object to his reading the testimony, but the question was——

Mr. Gillen: My question was whether that testimony I read, relating the instance recounted by another witness, refreshed her recollection that that was the way things occurred instead of the way she originally recalled.

The Court: The objection will be sustained.

Q. Well, does that refresh your recollection, what I just read you as Mr. Morgan's testimony, as to what occurred there?

(Testimony of Mrs. Helen Springer.)

A. There was no discussion in my presence.

Q. You have no recollection of a 15 or 20 minute discussion before Mr. Remmer was called into the room? A. None.

Q. Now you stated here that it is your recollection now, Mrs. Springer, that you were instructed by your superior to [2940] be at this place with these agents in Mr. Thatcher's office before 10:00 o'clock in the morning, is that correct?

A. No, sir. I was to report to Mr. Forrester's office and on reporting to Mr. Forrester's office, the agents informed me that we would go to a lawyer's office, and we went from Mr. Forrester's office to Mr. Thatcher's office.

Q. Now I am interested in the time that you fix. What was the time?

A. I am sure Mr. Forrester told me to be there before ten o'clock.

Q. To meet the agents in his office, is that correct? A. Yes.

Q. And what is your best recollection as to the time that you arrived in Mr. Thatcher's office?

A. Well, I was in Mr. Forrester's office before ten and that is when the agents told me that we would go to the lawyer's office and we went immediately from Mr. Forrester's office to Mr. Thatcher's office.

Q. You are sure, are you, that the appointment wasn't delayed until some time later in the day? You are positive it was approximately ten o'clock or thereabouts?

(Testimony of Mrs. Helen Springer.)

A. I went in the morning at ten o'clock, yes, sir.

Q. Now I am going to read you from page 2912 of the transcript, commencing at line 14, and this is the testimony of Mr. Robert Morgan, direct examination, and I will ask you to [2941] listen to this testimony, if you please, and tell me whether or not it refreshes your recollection as to the time of the appointment:

"Q. Will you state whether or not your going there on that occasion was by reason of a prior appointment? A. That is correct.

"Q. And do you recall at that time, to the best of your recollection, what time of day it was that you went to that office?

"A. I wouldn't state definitely, but I believe it was in the early afternoon.

"Q. What is your recollection as to the time originally set for your appointment there on that date?

"A. My recollection is that the previous day I called Mr. Woodburn to arrange a time——

"Q. Don't relate the conversation, but details had been arranged the previous day?

"A. Correct.

"Q. And with whom?

"A. With Mr. Woodburn.

"Q. Do you know which Mr. Woodburn? I believe the evidence shows more than one Woodburn.

"A. I was not aware that there were two individuals at the time. [2942]

(Testimony of Mrs. Helen Springer.)

"Q. And as a result of your conversation with Mr. Woodburn, was the appointment originally fixed? A. That is correct.

"Q. And for what hour, if you recall?

"A. As I recall, he first suggested we meet at approximately 10 o'clock in the morning.

"Q. Did you have a subsequent conversation with anyone, whereby the time of the appointment was changed? A. That is correct.

"Q. With whom, if you recall?

"A. As I recall, Mr. Woodburn called me later in the day, I believe at my hotel, and suggested a delay of a few hours.

"Q. At any rate, the following day you and Mr. Weaver and Mr. Harkness and this young lady went to those offices? A. That is correct.

"Q. Prior to going there, who was your appointment with, as you understood?"

There was an objection and voluntarily retracted by Mr. Campbell and then the question was put:

"Q. You say you arrived at the office early in the afternoon. Whom did you see there?

"A. We were ushered into the office of Mr. Thatcher." [2943]

Q. Does that refresh your recollection that the appointment was in the afternoon instead of ten o'clock in the morning?

Mr. Campbell: That is objected to, if the Court please, on the grounds she is called upon to refresh her recollection regarding conversation with Mr. Woodburn. The witness' testimony was that he

(Testimony of Mrs. Helen Springer.)

wasn't sure, he couldn't state definitely the time of day, but he thought early afternoon. It is true the last question read, I assumed in my question, although that was not the question, that the meeting was in the early afternoon.

The Court: She may answer the question.

A. No, I was at the office in the morning.

Q. When you were shown defendant's Exhibit G-1 today—with the Court's permission, I will hand it to you again—you stated that you recalled the letter, that that was the statement that you had handed to you on April 8, 1948, is that correct?

A. Yes, sir.

Q. Have you ever seen that statement between April 8, 1948, until Mr. Campbell showed it to you this morning in court? A. Never.

Q. Nobody in the interim showed you what purported to be a copy of that statement?

A. No, sir.

Q. And is it your testimony now that, having only seen that [2944] statement once—did you read the statement on that occasion? A. Yes, sir.

Q. And having only seen that statement once, on April 8, 1948, and never having seen it since that time, you were able to recognize it this morning as appearing to you as the statement which you read that day?

A. The contents are the same as I remember them. The letter was handed to us and was written in the third person and I know it was on Mr. Rem-

(Testimony of Mrs. Helen Springer.)

mer's refusal to give the statement that I was dismissed.

Q. Did you hear Mr. Remmer refuse to give a statement?

A. No, the information was in this letter.

Q. So it is your recollection now that you were able to recognize that letter this morning, although you had never seen it since the one occasion when you read it on April 8, 1948? A. Yes.

Mr. Gillen: I think that is all.

Mr. Campbell: Nothing further.

(Witness excused.)

Mr. Thompson: The government has no further evidence, your Honor.

Mr. Gillen: May it please the Court, the defense rests, but we do desire to call your Honor's attention that we have some legal matters to be presented to your Honor, which would [2945] have to be presented, of course, out of the presence of the jury, and we ask for your Honor's pleasure as to that.

The Court: I am going to excuse the jury at this time until Monday morning, and ladies and gentlemen of the jury, I want you to feel that the Court is not intentionally delaying the final conclusion of this case, but we have matters which must be taken care of and legal matters which will require all of our time until Monday. Now we will be ready Monday to proceed with the arguments in the case.

(Jury and alternate jurors admonished and excused at 11:00 a.m.) [2946]

(In the absence of the jury.)

**MOTION FOR ACQUITTAL**

(Febr. 14, 1952—Notebook No. 344 P. 90-100,  
Notebook No. 345 P. 1-17.)

Mr. Avakian: Without entering into discussion in the matter, unless your Honor desires me to, I simply want at this time, your Honor, to renew motions to strike testimony, which were made at the close of the government's case and on the same grounds advanced at that time.

The Court: The motion will be denied.

Mr. Avakian: Now with respect to the motion for acquittal, your Honor, in addition to all of the grounds and matters presented to your Honor at the conclusion of the government's case, which I likewise do not intend to review, unless your Honor desires me to, we have certain additional factors which we think your Honor should consider, so our motion for acquittal made at this time incorporates the grounds and reasons advanced at the close of the government's case, together with the additional factors which I would like to take up at this time.

First of all, I would like to call your Honor's attention to a decision of the Tax Court decided on November 30, 1951, of which I was not aware at the time the motion for acquittal was argued approximately a week ago. For some reason I had been a little bit behind in my reading of advance sheets during the past two months, your Honor, and I did not run across this decision until the last few days.



The case was decided by the Tax Court on November 30, 1951. The name is Blackman vs. Commissioner, cited in 10 TCM decision 18,692 (m). That was the case, your Honor, in which the Commissioner had assessed a deficiency against the taxpayer by the use of the net worth method and the taxpayer attacked the deficiency in the Tax Court on the ground that the net worth method was not the proper method to use and the Tax Court sustained that contention because the case was not a proper one for the use of the net worth method.

Now factually, your Honor, the Blackman case was the case of a man who operated a bar. The evidence showed that during the period involved and at the starting point of the period, he had in his possession in his safe sums of cash money, the exact amount of which was not and could not be determined at the time of the Tax Court trial, and that in addition, during the period involved he had borrowed sums of money from relatives. The evidence failed to show any omission from the records of the business, that is, the records of the bar, of any income of the bar. In other words, it was a case which was like this in all those respects I have mentioned—first of all, there was no evidence introduced in the case of any items of income that were not recorded in the books; in other words, there was no direct evidence of unrecorded income. Secondly, insofar as the attempted use of the net worth method was concerned, there was cash in some amount, which could not then be determined; and third, there were loans.

Now in setting aside the deficiency, the Tax Court made this statement, and I am quoting:

"The use of the increase in the net worth method of determining income has been sustained in cases of failure of the taxpayer to maintain adequate records," citing *Harris v. Commissioner*, 174 Fed. (2), 70, "and also to produce records."

Citing *Frank M. Wisley v. Commissioner*, 13 TC 253, confirmed 185 Fed. (2) 263.

Continuing with the quotation from the Tax Court:

"This case, however, differs from those cases and others in which the increase in the use of net worth has been sustained. In this case petitioner's principal source of income was from sales at his bar room. As to those sales, he had records and the respondent did not find error in them in determining the deficiency, nor in any evidence of the trial, although there was considerable examination of witnesses as to the accuracy of the records."

That is the end of the quotation. Now if I may invite your Honor's attention to the rule of that case as applied here, I think it should be applied in two ways. First of all, your Honor, the evidence now clearly shows—and this was not entirely clear at the close of the government's case—but the evidence now clearly shows that the prosecution has in its possession books and records of various enterprises involved in this case which it has not produced in court and which, in fact, it has refused to produce in court. Your Honor will recall that we

requested the production of these records during the trial, the prosecution objected to our request and the Court sustained the objection, and you will recall that prior to the trial we subpoenaed those records and the prosecution moved to quash the subpoena and your Honor granted that motion. I can not help but feel your Honor must have had in mind at the time those two rulings were made, that at some time before the trial ended, I am sure your Honor must have thought that the prosecution would bring those records into court, because they were relevant and material evidence and I can not believe your Honor had in mind that the defense would object at the time of this trial to having the jury consider the books and records of these other businesses involved in this case and which were in the possession of the prosecution. For reasons best known to itself, the prosecution has not produced those records. We feel, your Honor, as a matter of fundamental fairness, the prosecution should not be heard to say that the books and records are inadequate, when they refuse to bring in all of the books and records. That is a principle of fair play, which runs not only throughout the law, but through the minds of all of us in thinking of considerations of fair treatment of anybody. It isn't fair, your Honor, for the prosecution to say to this court and to the jury, "The records maintained by the defendant were incomplete," when they refuse to bring in some of those records which they have to let the Court and the jury determine for themselves whether they are complete; and so my first point,

your Honor, is that your Honor, as a matter of fair play, as a matter of justice, should say to the prosecution, "You can't contend that the records are inadequate and incomplete and therefore the net worth method may properly be used, in view of the fact that you have not brought into court all of the records and documents."

Now I don't know, your Honor, what is in those records and documents which the prosecution has upstairs on the third floor of this building. I assume, your Honor, that their production would be harmful to the prosecution and beneficial to the defense, and I make that assumption because of the aggressiveness with which the prosecution has resisted our efforts to get those documents into court. I think it is proper to infer, your Honor, from the persistent refusal of the prosecution to produce those records, that there is something in those records which would help our case and it might hurt their case. Certainly, if the documents were immaterial, they wouldn't be to our benefit. Certainly, your Honor, if those records would be detrimental to us and beneficial to the prosecution, we could assume that the prosecution would have brought them into court. That leaves only one alternative, your Honor, the only reasonable assumption we can make is that there is something in those records helpful to the defense and that is why the prosecution has persistently and consistently refused to make them available to us or to the Court.

Now I think, your Honor, it is a well recognized legal presumption that failure of a party to a litiga-

tion to produce evidence in its possession warrants the inference that the production of that evidence would be harmful to that party and beneficial to the other side. So, your Honor, in view of the rule that the net worth method can not be used unless there is first a showing that the books and records maintained are inadequate or incorrect, and in view of the fact that the evidence now shows that the prosecution has in its possession records and books additional to those presented in court here, books and records maintained by the enterprises involved, we submit, your Honor, that it would be unfair and unjust for your Honor to do anything else but to rule that, having taken that position, the prosecution can not, with clean hands, contend that the books and records of these enterprises were so inadequate that the net worth method is the proper method to use.

The Court: Let me ask you a question, please. The thought occurred to me as you were talking—what are books and records? Accounts of transactions. Now any book or record kept of these different enterprises necessarily have been kept within the knowledge of the defendant or his agents. The agents were here and if it had appeared during the trial that some accountant, Mr. Maundrell, or some one else who had custody of these books or records, if there is any other record of any transaction or any record, then we might have a question, but you haven't pointed to any specific record that is in existence or shown that there is any record in

existence which has not been produced during the course of this trial.

Mr. Avakian: No, I think, your Honor, that that has been shown.

The Court: What particular record is there now? Can you name one that has been named and kept in the course of the business of any enterprise and not been produced in this case?

Mr. Avakian: Mr. Semenza testified in his discussions that Mr. Weaver told him that among the records he had in his room in San Francisco, on the occasion of that conversation, were some cash register tapes of these businesses. Those have not been produced.

The Court: From whose custody did Mr. Weaver originally get these books and records?

Mr. Avakian: Mr. Weaver, Mr. Ezralow and Mr. Morgan have all testified that they obtained them from Mr. Maundrell and Mr. Kyne and from other representatives with whom they dealt—and that means the accountants Slater and Ayton, now dead—from various representatives who were connected with the bookkeeping or management of these particular enterprises they obtained all of the books and records and documents, material, bank statements, and so on that they knew of. So, your Honor, everything was turned over.

You asked me for instances of things in existence which were not produced here to the jury—poker sheets of the Menlo Club, maintained by the cashier who were employees, three cashiers per day. Those poker sheets for the year 1946 are now in the pos-

session of the prosecution. They chose to present in evidence here the poker sheet for January 1, 1946; for December 31, 1946; for January 1, 1947, and for one other day during 1946. In other words, they have presented the poker sheets for only three days during the year 1946, and they have not presented the poker sheets——

The Court: Have you at any time, during the course of the trial, asked for the production of those identical poker sheets you now name?

Mr. Avakian: We asked your Honor during the course of this trial for an order directing the prosecution to deposit with the Clerk all the books and records of these enterprises they had in their possession.

The Court: Did you make any requests for any specific item? You knew about all those and did you ask for their production? Will you answer that question?

Mr. Avakian: We have, your Honor. We filed a motion with this Court listing the different types of records by enterprises, naming the enterprises. We made a motion here, got a subpoena issued, your Honor, and your Honor quashed the subpoena. Now, your Honor, as I stated to you, none of the defense counsel has ever been permitted to look at these documents, neither has our accountant ever examined them, the documents in question. He was told in 1949, when he took a small section of these documents and there were four or five boxes of them remaining, he was told those would be available to him at a later time, but, your Honor, they never



were made available, so if your Honor is asking me whether I can give you a detailed list of every document in the possession of the prosecution, my answer is no. If your Honor is asking me whether I can state, from the evidence in this record, that there are books, records and documents relating to transactions of these businesses during the prosecution years, in possession of the prosecution, the answer is definitely yes, because the testimony shows it.

Now, your Honor, is it fair for the prosecution to say to the jury and to your Honor that the books and records are incomplete, they are inadequate, when they have in their possession books and records which they refuse to bring in? Your Honor, that is not fair, it violates every fundamental principle of fair play I can think of. That is not consistent with our principle of justice in this country. It is completely contrary.

The Court: If you had pointed out during the course of the trial any specific book or record, I would have been inclined to consider with some thought the request, but there has been no request for any specific book or record and I believe the records of these different enterprises were kept with the knowledge of the defendant or of his agents and if there was any record anywhere that would have been of any service to the defendant in this case, they would have been able to point it out and ask the Court to have it produced and that wasn't done at any time in the course of this trial or in any proceeding prior to this trial.



Mr. Avakian: Your Honor, the witnesses of the government, the agents who took these records, testified that they did not give receipts for them, so we have no receipts from them.

The Court: I am going to deny the motion on that ground.

Mr. Avakian: May I complete my answer to your Honor?

The Court: I am satisfied with your answer.

Mr. Avakian: You have not heard my answer.

The Court: I do not want to hear any more.

Mr. Avakian: I want the record to show I am trying to answer your Honor's inquiry.

The Court: I am satisfied with your answer.

Mr. Avakian: If your Honor wants to read my mind, all right.

The Court: You are getting a little bit impertinent.

Mr. Avakian: I am not trying to be impertinent.

The Court: Whether you are trying or not, you are making a pretty fair job of it. Now let us go along and tone things down.

Mr. Avakian: I am sure your Honor appreciates——

The Court (Interceding): I appreciate and understand. Now let's go along.

Mr. Avakian: I have to make a record, your Honor.

The Court: All right, that is the record on that point. You asked on that ground and I am denying it on that ground. Now what is your next point?

Mr. Avakian: Your Honor has made a factual

statement of what we have in mind and intend to do, which is not correct and I would like to correct it, and that is this, your Honor—we attempted to obtain through a subpoena duces tecum of this court, we attempted to obtain an opportunity to examine the records of these enterprises in possession of the prosecution, for the purpose of determining whether they had in their possession any specific documents material to this case, so that we could then specifically ask your Honor to force the production of those documents. Your Honor by granting the prosecution's motion to quash that subpoena, and by preventing us thereby from examining what they had in their possession, made it impossible for us to state to your Honor any specific document which we wanted brought in, so we are in the position, your Honor, of having to state to your Honor in a general way that there are books and records relating to these enterprises in the possession of the prosecution, which they have refused to produce and other, your Honor, than the cash register tapes, which I have enumerated specifically, and aside from the poker sheets of the Menlo Club, which I have enumerated specifically, we are not able to give you a detailed list of the precise documents they have and we are able to state to your Honor that there are documents and records in their possession which are the property of these enterprises, which were maintained by these enterprises as a recordation of their business transactions, which have not been produced in this court by the prosecution, although they have possession of them,

and your Honor will recall, I am sure, that in addition to the subpoena which was quashed, we sought an order of your court prior to the trial and asked in Las Vegas, by motion, requesting that we have the opportunity at that time, prior to the trial, to examine these records, and that was on November 15th. The prosecution objected to that motion and your Honor denied our motion. Had we been permitted to examine those records between November 15th and November 28th, we would then have been in position to state to your Honor by specific description the exact documents in possession of the prosecution which we desired to have presented. That, your Honor, is why——

The Court (Interceding): I denied that on several grounds. One was you waited until a week before the trial and granting of that motion would have entailed a long delay.

Mr. Avakian: Your Honor states we were too late on November 15th and yet you state if we had asked for it during the trial, you would have let us have it.

The Court: I am not going to sit and listen to any further statements from you. Are you ready to take up your second point?

Mr. Avakian: Yes.

The Court: Very well.

Mr. Avakian: The second point of the argument is even if the prosecution had laid the preliminary foundation for the use of the net worth method, by means of showing inadequacy and incorrectness of records maintained, or by showing the failure

to produce those records to the government, even with that testimony, there was still the factor, your Honor, that the net worth method could not be used under the law of the cases and under the Internal Revenue Code and the regulations, unless a starting point can be established and it can be determined that net worth can be measured accurately. Now that point was covered at the close of the government's case at the argument on the basis of evidence in existence at that time. Now additional testimony has come in, your Honor, and before the Court at the present time, showing, first of all, the impossibility of using the net worth method, in view of the impossibility of determining at this late date—or any date, for that matter—the amount of cash in existence on December 31st in each year involved in the indictment period. If you can not determine the net worth, you can not determine the net worth increase, and if you can not determine the net worth increase, you can not determine income by the net worth method.

In other words, your Honor, we have testimony that is uncontradicted by any accountant in this case, that it is possible to determine the income of the taxpayer, this defendant, by means of the books and records and the testimony of the witnesses in explanation of them in this case. Now that testimony of Mr. Semenza has not been challenged by any government accountants. Not one single government accountant has testified that he, as an accountant, could not determine the evidence from reference to receipts and disbursements through the

use of books and records in this case. On the contrary, the government's accountants, in presenting their charts, testified simply this, that they had taken a list of assets and liabilities on Mr. Campbell's instructions, and on the basis of that list, which was enumerated to them by Mr. Campbell, they made computations. In other words, your Honor, they were simply human comptometers. They took the figures given to them by a man who is a lawyer and stipulates he is not an accountant, they took figures that he gave to them and they added them and they subtracted them and they come up with a result, but that, your Honor, is not accounting evidence. That is not evidence of an accountant that this is the correct income. That is not evidence of an accountant that this is the correct method to determine income. That is simply evidence from a man who is an accountant that he has taken certain figures, which have been handed to him, not figures based on his judgment or analysis of what is proper accountingwise, but rather certain items and figures which have been given to him by a non-accountant, and he has added and he has subtracted and he has come up with an answer.

So I say to your Honor that we now have in evidence, as uncontradicted testimony, the testimony of a certified public accountant as to what the proper method is for determining the income on the basis of the evidence in the record and as to what that income is. Your Honor, we now have in evidence, as uncontradicted testimony, from a certified public accountant, the fact that the manner in

which the partnership investments and drawings were handled in this case is customary business practice with respect to partnerships in which one man puts up the investment and the other partners build up their equities by leaving their share of the profits in the business.

Now I think, your Honor, that this is a fair statement of the evidence and I think that the charts which have been presented and examination and cross-examination of the witnesses, makes it clear that there is no substantial deficiency in this case for any year, if the partnerships which were set up in the books of these enterprises and which were reflected in the partnership returns, are treated as partnerships, and if the income from those partnerships is taxed on a partnership basis. Now, your Honor, the only basis that I can find, which the prosecution may have in mind for contending that these partnerships are dummies rather than actual partnerships, is that Mr. Remmer put up the investment and the other partners did not, and, secondly, the other partners received credits in their capital accounts for their amount of the profits and, with some exception, did not actually draw out their profits during the years in question, although your Honor will recall substantial withdrawals subsequent to the indictment herein by various partners, Mr. Maundrell, for example, drawing out by February, 1948, substantially the full amount he had accumulated in his capital account; and, your Honor, if the evidence showed that the partners—

just to use Mr. Maundrell as an example—if the evidence shows that Mr. Maundrell had taken his share of the profits out of the business and then had surreptitiously turned that money over to the defendant, that would be a good basis for contending that that was not in fact a partnership, that it was a dummy.

The Court: The question of whether the partnership is a real partnership would be left to this jury.

Mr. Avakian: Your Honor, that should be left to the jury only if there is some reasonable basis upon which they could infer that the partnerships are phony.

The Court: It will be left to the jury.

Mr. Avakian: Do I understand your Honor has already made up your mind on that point?

The Court: On that point, certainly that is a question to be determined by the jury and all facts and circumstances to be determined by the jury on that question.

Mr. Avakian: I had not finished my presentation of that point.

The Court: You know I have sat here for ten weeks myself and listened to this evidence.

Mr. Avakian: So have I, but it is my understanding, your Honor, no matter how long the case——

The Court (Interceding): On that point I will tell you, and I think it is only fair to tell you, that I think that is a question to go to the jury.



Mr. Avakian: I had hoped that your Honor would have an open mind on that until I completed arguing my motion for acquittal, but I assume that your Honor——

The Court (Interceding): I listened to the testimony and your analysis of it is not going to change the impression I got from the evidence on that point. I think that is a question there for the jury. I do not know what the answer to the question is, but I think it is a question for the jury.

Mr. Avakian: I certainly do not question your Honor's right to form that opinion, but I hoped that wasn't your Honor's position and your mind would be open to the extent of listening to what I had to say or not cut me off before I finished, but rather keep your mind open, and in the event I present something to your Honor, you would reconsider, that your Honor would be open for that purpose. I do not know, your Honor, whether there is any point in my completing my presentation.

The Court: On that question I think it should go to the jury.

Mr. Avakian: Is your Honor's mind so definitely made up it is closed to any argument I might present? Shall I stop now or continue?

The Court: Go ahead. I am just telling you how I feel.

Mr. Avakian: I appreciate your telling me, but I hope your mind is open to anything I have to say.

The Court: If you say anything that could be considered sufficient to justify a change of opinion,



I will consider it, certainly. I sat here during this trial and listened to this evidence and made notes and I have some of this evidence in mind and it is my opinion that the question should be answered by the jury.

Mr. Avakian: I recall yesterday your Honor made a statement from the bench, in connection with offer of proof on this particular point, that it appeared obvious to your Honor that if the agreements provided that Mr. Remmer was to withdraw his investment before the other partners drew their part of their share, he was entitled to do that, and the uncontradicted evidence is that he did have that right. Every prosecution witness who has testified on that point has said that that was the arrangement, to the extent that verbal agreements were recorded in the written agreements and the written agreements are in evidence here and show that the defendant had that right, and so, your Honor, I think that if the defendant had the right under his agreement with these partners, as the uncontradicted evidence shows, to withdraw his investment before the other partners commenced withdrawing their share of the profits, and if, your Honor, that practice or arrangement is customary in the business world, I do not see, your Honor, how there is anything from which the jury could infer fraud.

The Court: There isn't from that, of course, on the one circumstance, if it is customary for legitimate partnerships to operate that way, from that circumstances there is no reason why the jury would infer fraud.

Mr. Avakian: Your Honor, I have listened to this trial, as we all have, and I have listened intelligently and with a careful ear on that very point, because I had assumed——

The Court (Interceding): I am not going to hear any more argument on that point.

Mr. Avakian: I just wanted to say that I have not heard anything to show fraud.

The Court: I do not want to hear any more argument. I do not know of any rule that requires a judge to sit and listen to argument which incites counsel—I am not going to sit and listen to any more. What other point have you?

Mr. Avakian: That, your Honor, is my point. In view of your Honor's ruling that I should not talk further on that point, that is the conclusion of my argument.

The Court: Now what has the government to say about it?

Mr. Thompson: Mr. Avakian, your Honor, in connection with his motion, has incorporated the same grounds which he asserted at the close of the government's opening case, and to save time I would like to incorporate the same rebuttal that we made at that time to those motions.

The Court: I would like to hear from you on this question of whether or not there are records of these enterprises which should have been produced in this trial.

Mr. Thompson: Here is our position on that, your Honor. The testimony is uncontradicted those records were produced by the government agents

and obtained by the government agents from Mr. Kyne and Mr. Maundrell, both of whom were present here and both of whom knew what the records were. Those two witnesses, your Honor will recall, are the principal witnesses who identified the records of these businesses now before the Court. In addition to that, Mr. Semenza testified, and his testimony was supported by that of Mr. Weaver, that in June, I believe, of 1949, he was given full access to all the records then in the possession of the government's agents and was permitted to select from those records the ones which he desired to take. In addition to that, Mr. Weaver testified that Mr. Friedman, another accountant for the defendant, subsequent to Mr. Semenza having access to the records, also was given permission to work in that particular office and had access to all the records.

Now, in the first place, we think that it is clear that the defendant and his counsel know what those records are. We also think it is plain, from what has occurred here during the trial, that whenever any specific record was requested which the defendants thought would help their case, it was brought down immediately. That was done with some poker sheets. Further, we think that it is not proper for the prosecution or the defense, or any party to any case, civil or criminal, intentionally to encumber the record with a group of irrelevant material which does not aid in the prosecution or defense of the case. From our point of view, that is what would have been done had a miscellaneous group of poker sheets of the Menlo Club, for ex-

ample, for the year 1946, been brought into court, in view of Mr. Maundrell's testimony that all of the information on those poker sheets had been entered in the ledger records of the Menlo Club for the year 1946; that those poker sheets were delivered to him by various cashiers of the club room operation. As a matter of fact, your Honor will recall that certain of the entries from the poker sheets were checked in connection with Mr. Maundrell's testimony and it was shown that the income reported on the poker sheets had been reported by him in the ledger books of the Menlo Club.

It is the contention of the defense that the books are accurate. The only purpose that could be served by producing the poker sheets themselves, for example, would be to show that they are inaccurate. It could not possibly aid the defense to have the poker sheets in evidence if the information transferred from the poker sheets to the ledger books of the Menlo Club is inadequate information on the poker sheets themselves. That would show only that the information was correctly transferred from one record to another and to that extent the books were accurate. So we say on the face of it, it does not hurt the defense a bit not to bring into court all this miscellaneous group of poker sheets from the Menlo Club, or, for example, cancelled checks or bank statements or cash register tabs, I believe were mentioned by Mr. Semenza, if the information from those records is correctly entered in the books themselves. The books compile it all in an easily understandable form and if that information is not entered in those books correctly, it

would hurt rather than help the defendant's contention to show that. Inasmuch as the miscellaneous records to which I refer were not brought into court, the presumption is that they were correctly entered in these books which are now before the Court, and to that extent the production of them would only encumber the record in this case with miscellaneous information which would not assist either the Court or the jury or the defense in deciding the issues before it.

Now with regard to books and records, your Honor, you must bear in mind that the Menlo Club is not on trial here, the 110 Eddy Club is not on trial here. The taxpayer is Mr. Elmer Remmer. It is the contention of the government that Mr. Elmer Remmer's books and records were inadequate from which to determine his true net income for the years in question. True, we contend that in certain respects the books and records of these other enterprises were not properly kept. Mr. Semenza, in testifying that they were adequate, disagrees with the testimony of Mr. Weaver, but be that as it may, the most that Mr. Semenza could do on a computation of income on receipts and disbursements method was to use the sources of income of which he was acquainted here in evidence and he limited himself to those certain specific enterprises. You do not, for example, find Mr. Semenza trying to compute how much Mr. Remmer won or lost in gambling during those years, and there is specific evidence in the record that during those years Mr. Remmer did gamble and did have gam-

bling income. As a matter of fact, on one of his returns he reported five thousand dollars gambling income, without any explanation where it came from or what gambling he was engaged in. There is a possible source of income in the liquor transactions, we find in the record of Mr. Remmer relative to the Gallagher and Burton whiskey. We find in the record of Mr. Remmer evidence relating to the purchase and sales of large stock of liquor which the witness was kept in a warehouse at 52 Mason Street. It is Mr. Remmer's records that are inadequate, your Honor. The inadequacy of those records, to a certain extent, is demonstrated by the inadequacy of some of the records of these businesses. The B & R Smoke Shop, the records for the gambling consist of one entry per day. Mr. Kyne testified those are the only records kept by the B & R Smoke Shop. Mr. Kyne did not know—I don't know who knows—if all of the B & R Smoke Shop records are in the record. Mr. Semenza did not testify that the B & R income was correctly reported. He testified that if the entries in those books were correct, the income was correctly reported, and I think it is fairly obvious when the only record of a business, handling thousands of dollars, is the record of one entry, win \$200, loss \$600, around three thousand dollars each day, that those records are wholly inadequate for the purpose of determining what the true net income of that business was.

The witness testified, for example, that all expenses of the operation of the B & R Smoke Shop

were paid out before that net figure was entered. What were those expenses? Certain expenses that that B & R Smoke Shop may have might be considered expenses, but may not be deductible items, so far as income determination is concerned. We have no record of those expenses. As any record of those expenses, that is the B & R Smoke Shop, is wholly inadequate, Mr. Remmer's personal records are wholly inadequate. He got property in the names of three persons, he took license in the Menlo Club in the name of Joseph Billington, he kept no record of those things himself. He had safety deposit box in the name of Henry Clay. All those things, I think, point clearly that there is fully adequate evidence in the record to go to the jury on the adequacy of the record.

It is not my purpose at this time to rehash the argument before the jury. I think there is substantial evidence on any point for the jury to decide that issue. We think there is ample evidence on all points which the defense has mentioned to warrant a denial of the motion for judgment of acquittal.

I do not know just how far your Honor wants me to go. I tried to point out a few highlights to show our contention, and if your Honor desires additional argument on any additional point, I will be glad to give it.

The Court: We will take a recess until one o'clock, and then if counsel wants to argue, they may do so.

1:05 P.M.

Mr. Thompson: I have nothing further at this time.

Mr. Avakian: I wish to be heard, very briefly, your Honor, with respect solely to this question of the matter of records.

The Court: Very well.

Mr. Avakian: Mr. Thompson takes the position, in answer to my argument, that it is not incumbent upon the government to encumber the record in this case with documents which do not aid the case. That argument, of course, begs the question, your Honor, because so far we have only the determination of Mr. Thompson, and the other members of the prosecution's staff, that these records would not aid the case. They have never permitted your Honor to rule on the materiality of these records because they have never brought them in. They have never permitted us, as the parties primarily responsible in determining whether certain evidence should be presented, is beneficial to the defendant, to determine whether or not those records might be material, and I only suggest this to your Honor, if the government really felt these records had no materiality to the case, they would have no objection to our examining them at the court, and even turning them over to us.

Second, Mr. Thompson states that the issue is not the adequacy of the records of the Menlo Club and the other enterprises, but rather the adequacy of the records of Mr. Remmer personally. Now, your Honor, if the government contends, as some of its



witnesses have, that Mr. Remmer is the Menlo Club, there is no partnership, the Menlo Club is a sole enterprise of Mr. Remmer, then I do not see how a distinction could be drawn of the kind Mr. Thompson draws. The fact remains that the only evidence of income shown in this case is the income of these different enterprises. Now whether the enterprise is solely Mr. Remmer or is a partnership, does not enter the question of whether the business records of that enterprise were adequate. Now the issue then is, your Honor, whether the business records of these enterprises were adequate. Mr. Thompson states that the production of the poker sheets would serve no purpose because Mr. Maundrell testified that the income shown on the poker sheets was all entered in the books.

Now, your Honor, if the prosecution is right in saying that these partnerships were fraudulent, then Mr. Maundrell is equally guilty with the defendant in the crime of tax evasion, because he was then a direct participant, he would have been a direct participant, in the crime, and so the jury might feel that Mr. Maundrell's testimony that all the income shown on the poker sheets was entered on the books, would not be as competent as an actual examination of the poker sheets themselves and a direct comparison of them, a direct proof that all income shown on the poker sheets was entered in the books, because your Honor will remember that the poker sheets were made up, not by the partners, but by employees, a large number of them, and the jury might very well feel that proof,

direct proof from the actual introduction into evidence of the poker sheets, that everything shown on the poker sheets was entered in the books, would be stronger than the simple verbal word of Mr. Maundrell who, under the government's theory, would have been a participant in the crime, that he entered all that evidence, so we think, your Honor, that it must be clear that the production of those poker sheets and the opportunity to so prove, through analysis of the poker sheets themselves, that everything was in evidence, would have been material in this case.

Then he states, with respect to the B & R Smoke Shop, that Mr. Kyne said the one entry per day were the only records of the B & R Smoke Shop. Your Honor will recall that during the time Mr. Kyne was in the service, Mr. Pritchett was keeping the records. Mr. Pritchett testified he turned these 1945 records over to Mr. Slater. The government obtained records from Mr. Slater. Mr. Slater is now dead, died some time ago, and it may be included in these records that the prosecution has upstairs, is material taken from Mr. Slater which may include Pritchett records. Now, your Honor, if that were true, it would be a material fact for the jury to consider what those records show as income of the B & R Smoke Shop for that period. Mr. Slater is not available to us. We do not know whether the records taken from Mr. Slater include the records from Mr. Pritchett or not because the prosecution won't let us look at what they took from Mr. Slater. They won't let the jury look at

what they took from Mr. Slater and they haven't shown to your Honor what they took from Mr. Slater; so I think, your Honor, Mr. Thompson's argument simply emphasizes what is an arbitrary position by the prosecution as to which records maintained by these enterprises are material and which are not material. Now I suggest to your Honor again that that sort of procedure violates every principle of American justice. That is not the way criminal trials are supposed to be conducted in this country, and I say to your Honor in all sincerity, in all earnestness, that the proper thing for your Honor to do, under these circumstances, is to say to the prosecution: "You will not be heard in this Court to contend that the records of these businesses are inadequate unless you produce for examination by the Court all of the records of these businesses which you have in your possession."

The Court: The motion is denied.

State of Nevada,  
County of Clark—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had at the trial of the case entitled United States of America, Plaintiff, vs. Elmer F. Remmer, Defendant, No. 12,177, held in Carson City, Nevada, commencing November 28, 1951, and that the foregoing pages, numbered 1 to 246, inclusive, comprise a full, true, and correct

transcript of my said shorthand notes of proceedings had in the absence of the jury on February 5, 6, 7, 8, 11, 13 and 14, 1952, to the best of my knowledge and ability.

Dated at Las Vegas, Nevada, April 10, 1952.

/s/ MARIE D. McINTYRE,  
Reporter.

[Endorsed]: Filed April 18, 1952.

Monday, February 18, 1952—10:00 A.M.

(Defendant present with counsel.)

(Jury not present.)

The Court: Now at this time I call attention to Rule 30 of the Rules of Federal procedure. The Court has noted that the first part of this rule has been complied with. Counsel have presented their written requests as to instructions to the jury and those requests have, of course, been served on the parties. Now at this time I wish to inform counsel for the government and counsel for the defendant the Court will give, and proposes to give, the instructions, copies of which just before coming into court were handed to counsel for both the government and the defendant, the instructions being numbered 1 to 45, inclusive. I want to at this time inform counsel they have an opportunity now to make objection to the giving of any of these proposed instructions or take exceptions as to the failure of the Court or refusal of the Court, to give instructions

requested by counsel. I believe it would be well to take that matter up now.

I want to inform counsel also that that proposed change suggested in regard to the form of verdict and last instruction will not be followed. The Court [2947] will give the form of verdict which is the practice of this court to be submitted to the jury and the form of instruction in that regard will be followed in this case. That probably is the last instruction proposed. That proposal to give the instructions constitutes the Court's action on the requests.

Mr. Campbell: Your Honor, as I understand the Court's order is that instructions previously numbered 1 to 45 will be the instructions as given by the Court.

The Court: As just presented to counsel will be the instructions.

Now at this time the Court will give counsel an opportunity to object to any of the proposed instructions, 1 to 45, inclusive, and also an opportunity to take exceptions to the refusal of the Court to give any other instruction and at this time counsel should make their objections and state the grounds of the objection.

Mr. Campbell: The government has no objections or exceptions.

The Court: Counsel for the defendant?

Mr. Golden: Yes, your Honor. We object and except to the Court giving the instruction which we believe is numbered Court's Instruction No. 7.

The Court: That instruction reads: "You are instructed [2948] that the theory of law——"

Mr. Golden: Yes, your Honor, and the grounds are that it does not state the law, in that the presumption of innocence, in our opinion, applies to every defendant and is not qualified as set forth in that instruction.

We object and except to the Court giving the instruction which the Court has numbered 40, the one that starts: "The matter of sympathy \* \* \*" on the ground that it presents only one phase of the subject matter which it purports to cover and therefore is not an impartial instruction, in that it instructs the jury not to consider the matter of sympathy for the defendant and says nothing about the fact the jury should not consider the matter of prejudice against him. And while those two points are, I believe, covered in another instruction which the Court will give, the addition of this instruction emphasizes the matter of the disregard of sympathy without repeating the matter of disregard of prejudice.

Those are the only objections and exceptions we have to the matter the Court proposes to give.

We do, however, wish to object and except to proposed instructions which the defendant has requested and the Court has refused and we do in each case on the grounds that the instruction refused is a correct statement of the law and applicable to the case; that it is the Court's duty, in a criminal case, to instruct upon every phase of the law which pertains to the [2949] case and that the

refusal to give those instructions, or the substance of them, results in the Court not performing that duty. I say that respectfully, of course.

Now those instructions, your Honor, are—I am using now the numbers on our proposed instructions—those requested instructions Nos. 10, 16, 17, 19, 21, 26, 28, 39, 40, 41, 42, 43, 47, 48, 49, 50, 54, 56, 57, 60, 69, 75, 77, 78, 79, 80, 81, 82, 88, 89, 90, 107, 108, 109, 111, 114, 124, and 129, and we make the objection and exception to the refusal to give those instructions jointly and severally; that is, we object and except to the refusal to give each one of them. I say that because some of them concern the same subject matter. I think that covers it.

The Court: I think we have complied with Rule 30 now. Any question about it?

Mr. Golden: I think so, yes.

The Court: So we will call in the jury and proceed with the arguments. [2950]

[Title of District Court and Cause.]

### JURY TRIAL

Thursday, February 21, 1952, 11:35 A.M.

### DEFENDANT'S MOTION TO CORRECT ERRORS IN RECORD ARISING FROM OMISSIONS

The Court: You may proceed.

Mr. Golden: If the Court please, this motion is made in writing and filed and the motion has at-

tached to it an affidavit made by myself and Mr. Avakian and Mr. Lohse. It is one affidavit but it is made by each of us for himself, not one for the other, and the motion, your Honor, is to insert some additional matter in the transcript, and the pages in the transcript which are relevant are pages 833 and 834. Now it might assist if those pages are available.

The Court: You may read it.

Mr. Golden: Commencing on page 833, the middle of the page, line 12, Mr. Gillen says: "May I be heard?" and the Court says: [2951]

"Just let me finish. I am doing the talking here. There is no necessity of that remark. Your remark in making that objection to these nicknames received here, imputing something against government's counsel—Mr. Campbell has not conducted himself in any way to merit that kind of treatment. That isn't fair treatment of one lawyer to another. This isn't a contest between counsel for the defendant and counsel for the plaintiff. Now we will call in the jury."

The Court: The record shows that those remarks were made in the absence of the jury?

Mr. Golden: Yes, your Honor—"Now we will call in the jury:

"Mr. Gillen: You are not going to let me say a word?

"The Court: We are going to call the jury.

"(Off-the-record remarks by counsel.)"

The Court says:

"I will direct the reporter not to put your re-



marks in the record. Sit down. I will make a finding that your conduct, the remarks made this morning, are in contempt of this court and I will fine you \$100 and you are committed to the custody of the marshal until the fine is paid.

"Mr. Gillen: I will pay it right now.

"The Court: We will be in recess. [2952]

"Mr. Avakian: Can't we have what was said here in the record?

"The Court: No. We will be in recess for five minutes."

Now according to the affidavit which is on file with the motion, at the point where Mr. Gillen says: "May I be heard?" and the Court says: "Just let me finish. I am doing the talking here," at that point the affidavit states that at that point the Court informed Mr. Gillen, in reply to his question, "May I be heard?" that he would have an opportunity to explain his position to the Court when the Court had completed the Court's remarks, and the first request made by the motion is that at that point, after the Court says: "I am doing the talking here," there be inserted language to the effect that the Court then said to Mr. Gillen that when the Court was finished Mr. Gillen would have an opportunity to explain his position.

Then the second request made by the motion comes at a place in the transcript after the Court says: "We are going to call the jury" and where the reporter has inserted in parentheses the off-the-record remarks by counsel, the affidavit shows that at point Mr. Gillen stated that he wanted the

record to show that the Court would not hear what he wanted to say, and we move that words to that effect be inserted at that point.

The Court: Let me ask you a question. Both these requests pertain to matters after the adjudication of the [2953] contempt?

Mr. Golden: No, your Honor, actually they are before the adjudication.

The Court: Both of them are?

Mr. Golden: Both of them, yes, your Honor.

The Court: Go ahead. Pardon me for interrupting. I just wanted to get that point certain.

Mr. Golden: The third and last matter of my motion occurs after the Court's finding Mr. Gillen's conduct to be in contempt of the Court and at the end of the language which I read to your Honor from pages 833 and 834 and that is this, that at that time I, myself, requested that the record show the grounds upon which your Honor found Mr. Gillen's conduct to be contemptuous and the affidavit shows that I made that request and that the Court left the bench without reply to that request.

Now, specifically, the first insertion which we request would occur after the first word on line 14 of page 833 of the transcript and the second requested insertion would occur in lieu of the reporter's statement in parenthesis of "(Off-the-record remarks by counsel)," which on the last line of page 833, and the third requested insertion would occur after line 11 on page 834 of the transcript. I say that in order to make the matter clear.

This is simply a matter, your Honor, where the

transcript is admittedly incomplete, if at no other place, in the [2954] place where the reporter says, "(Off-the-record remarks by counsel)." The matter occurred in court on December 14th. The affidavit was made on December 17th and represents the best recollection of affiants as to what was actually said. I suppose no human being could be positive as to the exact words which we used which, of course—I say this respectfully—the precise matter said in court being unreported. However, it represents, we are satisfied, the substance of what was said and there is no contrary showing from the prosecution and therefore we ask that the record be corrected by inserting that matter as set forth in the affidavit at the places I have indicated.

Mr. Campbell: If the Court please, I must confess with Mr. Golden that the matter happened at the time so precipitously and suddenly that I can not definitely state I have a clear recollection of the exact language used at the time. I do recall, however, one statement which Mr. Gillen made immediately after the jury had left and prior to some of the matters set forth here. Mr. Gillen stated something to this effect—I am not trying to quote the exact language—what I am referring to was made during the off-the-record period and prior to the contempt. He stated something to the effect as follows that—"You are just trying to intimidate me with another threat of contempt for the benefit of the newspapers." I do have a definite recollection of a statement to that effect. [2955] As I say, I cannot state the exact words. Now, as to these

matters set forth in the affidavit of Mr. Golden and Mr. Avakian——

The Court: I remember such remarks.

Mr. Campbell: ——my recollection would coincide with theirs as to the statements set forth here. That is the extent of my recollection. The thing happened very rapidly at the time, but I do remember that particular statement of counsel after the jury was excused and during the period of time when the Court had instructed the reporter: "Do not take this down. Do not make this a part of the record." I simply want to make that for the record.

Mr. Golden: Apparently, your Honor, Mr. Campbell agrees that the affidavit is substantially correct. Now, it may well be that Mr. Gillen said something to the effect as Mr. Campbell has stated at another portion of the transcript. In other words, your Honor, at the bottom of page 833 the affidavit says that Mr. Gillen requested that he wanted the record to show that the Court would not hear what he had to say.

The Court: I have a recollection here I would like to give you right now. At the time shortly after the jury was excluded we had a discussion here and I, at that time, had no thought of any adjudication of contempt and requested to have the jury brought in, when Mr. Gillen, in an outburst—something which you [2956] can't place in these records, these records are cold—insulting outburst, outrageous, ungentlemanly, in an unkind manner, accused this Court of making a play to the gallery, as you might

say, and that interrupted the calling in of the jury and to my mind the conduct of Mr. Gillen at that time left no other alternative, to either get off the bench and step off, or to adjudicate him for contempt. Now, that is my recollection.

Mr. Golden: Your Honor, we understand that is your position but we are not trying to change anything about the contempt——

The Court: I do not see anything about that in the record.

Mr. Golden: It is in your Honor's ruling and I want to point to that certificate, that will give it. Has your Honor got that ceretificate before you?

The Court: No.

Mr. Golden: According to the Court's certificate, page 3 of the certificate, your Honor sets forth that after you said on the second line of page 834, after you said to Mr. Gillen: "Sit down," then your Honor says the following: "After the Court ordered the reporter not to put Mr. Gillen's remarks——"

The Court (Interceding): You recollect what took place and so does Mr. Gillen. You know the manner in which he addressed the Court. He wasn't in any [2957] frame of mind for an ordinary human being to give a sound, decent explanation of anything in this record. Now, I am going to deny this motion now.

Mr. Golden: Your Honor, we are not appealing to do anything about the contempt.

The Court: The motion is denied.

Mr. Golden: Just change the record to speak the truth the way it is.

The Court: Motion denied. [2958]

State of Nevada,  
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, in and for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had and the testimony adduced in the case entitled United States of America, Plaintiff, vs. Elmer F. Remmer, Defendant, No. 12,177, at the jury trial held at Carson City, Nevada, commencing November 28, 1951, and concluding February 21, 1952, and that the foregoing pages, numbered 2012 to 2958, inclusive, dated January 28 to 31, inclusive, 1952, and February 1 to 21, 1952, inclusive, comprising the last and fourth volume, are a full and correct transcript of my said shorthand notes, excluding arguments in the absence of the jury, to the best of my knowledge and ability.

Dated at Carson City, Nevada, February 21, 1952.

/s/ MARIE D. McINTYRE,  
Official Reporter.

[Endorsed]: Filed February 23, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, Amos P. Dickey, Clerk of the United States District Court for the District of Nevada, do hereby certify that the following and accompanying documents and exhibits, listed below, are the originals filed in this court, or true and correct copies of orders entered on the minutes or dockets of this court, in the above-entitled case, and that they constitute the record on appeal herein as designated by the parties.

1. Indictment.
2. Motion for a bill of particulars.
3. Memorandum of Points and Authorities supporting motion for a bill of particulars.
4. Copy of docket entry of June 15, 1951, denying motion for bill of particulars.
5. Reporter's transcript of arraignment.
6. Notice of Motion for Continuance.
7. Motion for Continuance.
8. Notice of Motion to inspect and take copies.
9. Motion to inspect and take copies.
10. Affidavit of John R. Golden in support of motion for continuance and of motion to inspect and take copies.
11. Affidavit of Spurgeon Avakian in support of motion for continuance and of motion to inspect and take copies.
12. Affidavit of Walter M. Campbell, Jr., in op-

position to motion for continuance and to motion to inspect and take copies.

13. Copy of criminal docket entry of November 15, 1951, denying motion for a continuance and motion to inspect and take copies.

14. Notice of motion for production and inspection of books, papers, documents and objects.

15. Motion for production and inspection of books, papers, documents and objects.

16. Affidavit of Christopher P. Miller in support of motion for production and inspection of books, papers, documents and objects.

17. Affidavit of Leslie C. Gillen in support of motion for production and inspection of books, papers, documents and objects.

18. Reporter's transcript of hearing on motion for continuance.

19. Notice of Motion to Quash Subpoena Duces Tecum.

20. Motion to Quash Subpoena Duces Tecum.

21. Reporter's transcript of hearing on motion to quash subpoena and motion for inspection.

22. Copy of criminal docket entry of November 27, 1951, denying motion for production and inspection; granting plaintiff's motion to quash subpoena duces tecum; and denying telegraphic request of Walter M. Campbell, Jr., for postponement of trial.

23. Reporter's transcript of hearing on contempt of court of David N. Kessel and Walter M. Pechart.

24. Affidavit Supplying Omissions in the Record.



25. Copy of criminal docket entry of February 21, 1952, denying motion to correct errors arising from omissions.

26. Reporter's transcript of arguments during course of trial in the absence of the jury.

27. Reporter's transcript of hearing on defendant's motion for bill of particulars.

28. Instructions to the Jury given by the Court.

29. Defendant's Requested instructions refused by the Court.

30. Verdict of the Jury.

31. Judgment and Commitment.

32. Copy of criminal docket entry of February 22, 1952, denying defendant's oral motion for order releasing defendant on bail.

33. - Motion for New Trial.

34. Affidavit in Support of Motion for New Trial.

35. Copy of criminal docket entry of February 29, 1952, denying motion for new trial; and Judgment.

36. Election not to commence service of sentence and motion to stay payment.

37. Copy of criminal docket entry of February 29, 1952, staying payment of fines upon the filing of a bond.

38. Motion for Bail upon Review.

39. Copy of criminal docket entry of February 29, 1952, denying motion for bail upon review.

40. Notice of Appeal.

41. Designation of Record on Appeal.

42. Reporter's Transcript of Arguments during

course of trial in absence of the jury. (2nd volume.)

43. Four volumes of Reporter's Transcript of Testimony.

44. Plaintiff's Exhibits Nos. 1 to 188, inclusive, excepting those exhibits marked for identification only, and as shown on the list of government exhibits admitted in evidence, which list is accompanying this record.

45. Defendant's Exhibits Nos. A through Z and A-1 through M-1, page 3, excepting those defense exhibits marked for identification only, and as shown on the list of defense exhibits admitted in evidence, which list is accompanying this record.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said United States District Court this 19th day of March, 1952.

AMOS P. DICKEY,  
Clerk.

By /s/ O. F. PRATT,  
Deputy Clerk.

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT

United States of America,  
District of Nevada—ss.

I, Amos P. Dickey, Clerk of the United States District Court for the District of Nevada, do hereby

certify that, pursuant to "Order that Defense Exhibits for Identification be Included in Record on Appeal," filed April 4, 1952, in the above-entitled case, there is accompanying this certificate the following Defendant's Exhibits marked for Identification: Nos. E, I, L-1, L-2, L-3, L-4, Z, D-1, E-1, and F-1; all of which were marked for identification and constitute a part of the record on appeal in the above-entitled case.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said United States District Court this 8th day of April, 1952.

AMOS P. DICKEY,  
Clerk.

By /s/ O. F. PRATT,  
Deputy Clerk.

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[Endorsed]: No. 13281. United States Court of Appeals for the Ninth Circuit. Elmer F. Remmer, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed March 24, 1952.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

[Title of District Court and Cause.]

**MOTION FOR AN ORDER THAT DEFENSE  
EXHIBITS FOR IDENTIFICATION BE  
INCLUDED IN RECORD OR APPEAL**

The defendant, through his undersigned counsel, respectfully moves the Court for its order that the defense exhibits for identification introduced at the trial of the above-entitled action, be included in the record on appeal herein and that the Clerk of the above-entitled Court forward the same to the Clerk of the United States Court of Appeals for the Ninth Circuit as part of said record.

This motion will be made under Rule 47 of the Federal Rules of Criminal Procedure upon the grounds that it is necessary that said exhibits be included in said record and forwarded to the Clerk of the United States Court of Appeals for the Ninth Circuit, because one of the assignments of error on said appeal is the trial Court's denial of the offers of said exhibits in evidence and the sustaining of the plaintiff's objections to their admission in evidence, and the United States Court of Appeals for the Ninth Circuit can not pass upon such assignment of error and decide whether or not said exhibits or any of them should have been received in evidence, unless said exhibits are before said Court.

Dated this 28th day of March, 1952.

**JOHN R. GOLDEN,**  
Attorney for Defendant.

A true copy from the records.

Attest:

AMOS P. DICKEY,  
Clerk.

By /s/ O. F. PRATT,  
Deputy.

[Endorsed]: Filed April 1, 1952.

---

[Title of District Court and Cause.]

ORDER THAT DEFENSE EXHIBITS FOR  
IDENTIFICATION BE INCLUDED IN  
RECORD ON APPEAL

Upon motion and cause appearing, it hereby is ordered that the defense exhibits for identification introduced at the trial of the above-entitled action, be included in the record on appeal herein and that the Clerk of the above-entitled Court forward the same to the Clerk of the United States Court of Appeals for the Ninth Circuit as part of said record.

Dated this 4th day of April, 1952.

ROGER T. FOLEY,  
United States District Judge.

A true copy from the records.

Attest:

/s/ AMOS P. DICKEY,  
Clerk.

By /s/ O. F. PRATT,  
Deputy.

[Endorsed]: Filed April 4, 1952.

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[Title of District Court and Cause.]

NOTICE OF MOTION FOR AN ORDER THAT  
DEFENSE EXHIBITS FOR IDENTIFICA-  
TION BE INCLUDED IN RECORD ON  
APPEAL

To United States of America, Plaintiff, and to  
Honorable Miles N. Pike, United States At-  
torney:

Please take notice that the undersigned counsel  
for defendant will, on Monday, the 7th day of  
April, 1952, at 10:00 o'clock in the morning, at the  
Courtroom of the above-entitled Court, at Las  
Vegas, Nevada, move the above-entitled Court for  
its order that the defense exhibits for identification  
introduced at the trial of the above-entitled action,  
be included in the record on appeal herein and that  
the Clerk of the above-entitled Court forward the  
same to the Clerk of the United States Court of

Appeals for the Ninth Circuit as part of said record. A copy of said motion is attached hereto.

Dated this 28th day of March, 1952.

JOHN R. GOLDEN,  
Attorney for Defendant.

A true copy from the records.

Attest:

[Seal] AMOS P. DICKEY,  
Clerk,

By /s/ O. F. PRATT,  
Deputy.

[Endorsed]: Filed April 9, 1952.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 13281

ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH AP-  
PELLANT INTENDS TO RELY ON AP-  
PEAL

The points on which appellant intends to rely on appeal are as follows:

1. The Court erred in denying defendant's motion for a bill of particulars.

2. The Court erred in denying defendant's motion to inspect and take copies.

3. The Court erred in denying defendant's motion for production and inspection of books, papers, documents and objects and in quashing the subpoena duces tecum issued in connection therewith.

4. The Court erred in denying defendant's challenge for cause to the prospective juror John W. Humphrey.

5. The Court erred in compelling defendant's counsel during the trial, to produce defendant's books and records and in denying defendant's motions to return them and suppress their use in evidence, and in admitting them in evidence over defendant's objections.

6. The Court erred in denying defendant's motions, during the trial, for the production and inspection of defendant's books and records taken and retained by the Government and withheld from him, and in denying defendant's motions to suppress their use in evidence.

7. The Court erred in denying defendant's request to adduce evidence in support of defendant's motions described in the preceding points 5 and 6.

8. The Court erred in sustaining objections to questions addressed to the Witnesses Kyne, Maundrell, Schriber, Weaver, Brady, Morgan and Hark-



ness, and each of them for the Government, and the Witnesses Semenza, Woodburn, Thatcher, Graham, Edna Jeffress, James Jeffress and Golden, and each of them for the defense, and in rejecting defendant's offers of proof in connection with said defense witnesses and said Brady.

9. The Court erred in refusing to allow in evidence Defendant's Exhibits for Identification Z, D-1, E-1 and F-1, and each of them.

10. The Court erred in admitting and denying defendant's motion to strike certain testimony of the Witness Weaver.

11. The Court erred in denying defendant's motions and each motion for a mistrial.

12. The defendant was substantially prejudiced and deprived of a fair trial by reason of the acts and conduct of the trial judge.

13. The defendant was substantially prejudiced and deprived of a fair trial by reason of the acts and conduct of the Court, the jury, the prosecuting attorneys and Agents of the Federal Bureau of Investigation, and each of them, in the matters and things and under the circumstances described in the affidavit filed with the motion for new trial.

14. The Court erred in denying defendant's motion for judgment of acquittal made at the conclusion of the evidence.

15. The Court erred in instructing the jury.

16. The Court erred in refusing to instruct the jury.

17. The Court abused its discretion in denying defendant's motion for new trial.

18. The Court abused its discretion in denying defendant a trial of the issues raised by the affidavit of defendant's counsel on motion for new trial.

19. The judgment against defendant is not supported by substantial evidence.

Dated this 14th day of April, 1952.

LESLIE C. GILLEN,

JOHN R. GOLDEN,

SPURGEON AVAKIAN,

LOHSE AND FRY,

By /s/ JOHN R. GOLDEN,

Attorneys for Appellant.

[Endorsed]: Filed April 15, 1952.

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[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD  
TO BE PRINTED

Appellant hereby requests that the entire transcribed record forwarded and to be forwarded by the Clerk of the United States District Court for the District of Nevada, including Government Exhibits 1, 2, 3, 4, 68, 78, 81, 82, 84, 85, 87, 87a, 88,

88a, 89, 113, 125c, 130, 140, 153, 163, 164, 165, 168, 169, 172, 174, 175 and 183 and defense Exhibits F, G, H, O, X, Y, A-1, G-1 and M-1 and defense Exhibits for Identification Z, D-1, E-1 and F-1, be printed.

Dated this 14th day of April, 1952.

JOHN R. GOLDEN,  
For Appellant's Attorneys.

[Endorsed]: Filed April 15, 1952.

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[Title of Court of Appeals and Cause.]

STIPULATION AND ORDER  
RE EXHIBITS

Appellant having designated for printing Government Exhibits 1, 2, 3, 4, 68, 78, 81, 82, 84, 85, 87, 87a, 88, 88a, 89, 113, 125c, 130, 140, 153, 163, 164, 165, 168, 169, 172, 174, 175 and 183 and defense Exhibits F, G, H, O, X, Y, A-1, G-1 and M-1 and defense Exhibits for Identification Z, D-1, E-1 and F-1 and the remainder of the exhibits introduced at the trial, irrespective of their materiality or their immateriality in the opinion of either appellant or appellee, being in the main incapable by their nature of being printed or of such nature that the printing thereof would entail exorbitant expense, it hereby is stipulated by and between appellant and appellee by their undersigned counsel thereunto duly authorized, that each and all of said exhibits,

not previously designated to be printed, may be used and considered as part of the record herein on appeal in their original form.

Dated this 26th day of April, 1952.

**MILES N. PIKE,**

United States Attorney;

**WALTER M. CAMPBELL, JR.,**

Special Assistant,

United States Attorney;

By /s/ **BRUCE R. THOMPSON,**  
Attorneys for Appellee.

**LESLIE C. GILLEN,**

**JOHN R. GOLDEN,**

**SPURGEON AVAKIAN,**

**LOHSE AND FRY,**

By /s/ **JOHN R. GOLDEN,**  
Attorneys for Appellant.

**ORDER**

Upon reading and filing the foregoing Stipulation and cause appearing,

It Hereby Is Ordered that all of the exhibits herein not heretofore designated to be printed, may

be used and considered as part of the record on appeal herein in their original form.

Dated this 28th day of April, 1952.

/s/ WILLIAM DENMAN,

/s/ WILLIAM HEALY,

/s/ WALTER L. POPE,

Judges, U. S. Court of Appeals, for the Ninth Circuit.

[Endorsed]: Filed April 28, 1952.

BLURRED COPY

BLEED THROUGH- POOR COPY

# Vol. IX

## TRANSCRIPT OF RECORD

(Pages 2015 to 2102)

Supreme Court of the United States

OCTOBER TERM, 1903

No. 304

WILLIAM F. REMMER, PETITIONER,

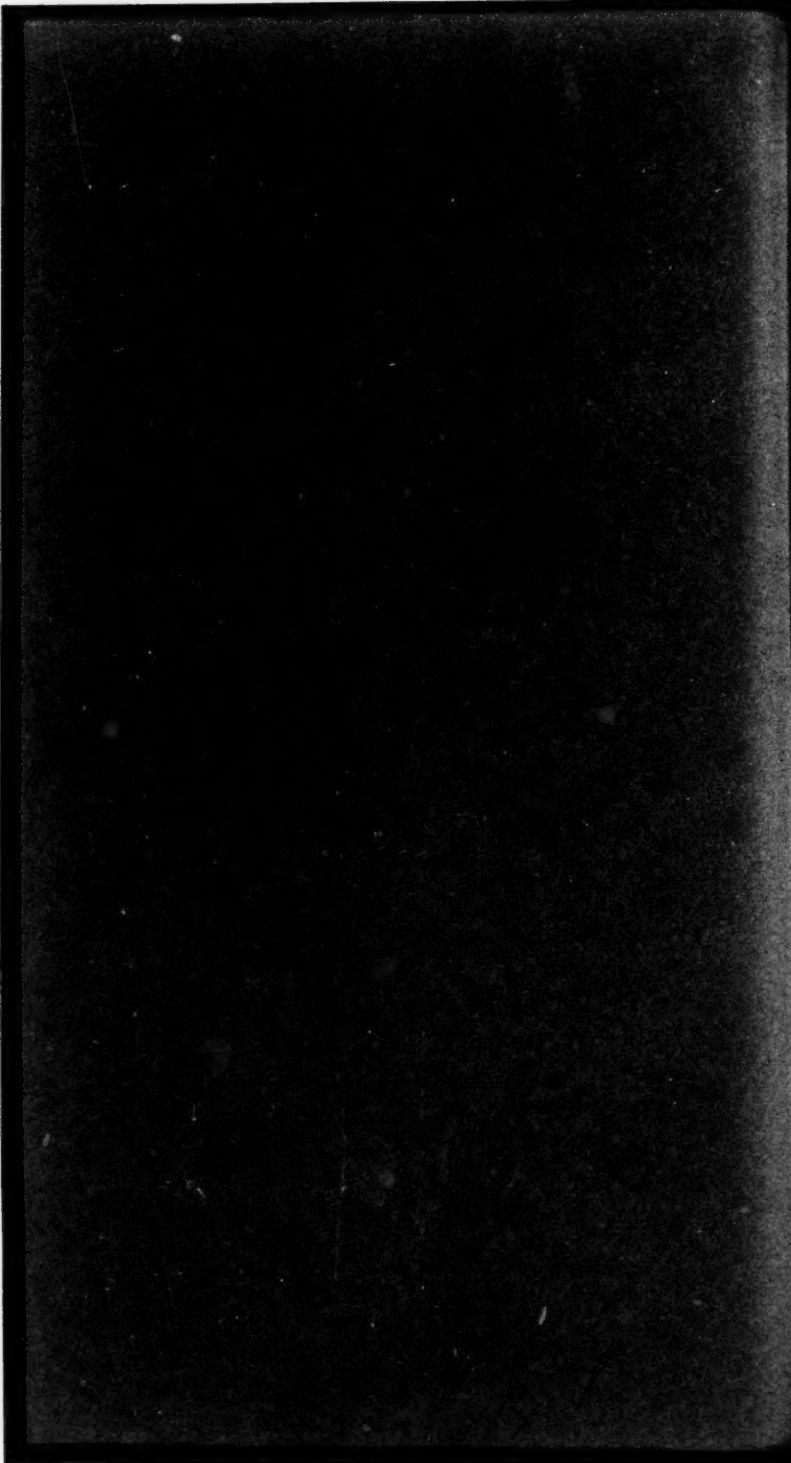
UNITED STATES OF AMERICA

ON PETITION OF REMMER TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

RECEIVED FOR COMMENCEMENT OCTOBER 21, 1903

COMMENCEMENT REPORTED NOVEMBER 21, 1903





BLEED THROUGH- POOR COPY

No. 13281

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**United States  
Court of Appeals**  
for the Ninth Circuit.

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**ELMER F. REMMER,**

**Appellant,**

**vs.**

**UNITED STATES OF AMERICA,**

**Appellee.**

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**Transcript of Record**  
**In Nine Volumes**  
**Volume IX**  
**(Pages 3519 to 3665)**

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**Appeal from the United States District Court  
for the District of Nevada.**

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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PLAINTIFF'S EXHIBIT No. 1

Form 1040—Treasury Department Internal Revenue Service

U. S. Individual Income Tax Return 1944  
For Calendar Year 1944

or fiscal year beginning....., 1944, and ending April, 1945

File Code 153; Serial No. 300136; District Nevada.

(Cashier's Stamp) 420 Rec'd With Remittance 88 Apr. 13, 1945.

Name, Elmer F. Remmer,  
Address, Cal-Neva,  
Lake Tahoe, Nev.

Your Exemptions

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives with 1944 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Your name, Elmer F. Remmer.

Helen L. Remmer, wife.

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, Before Pay-Roll Deductions for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

Print Employer's Name, various.

Where Employed, self employed, C.P. Basis, Amount \$20,000

5. Add amounts in items 2, 3, and 4, and  
enter the total here.....\$10,000

If item 5 includes income of both husband and wife, show husband's income here, \$10,000.00; wife's income here, \$10,000.00.

Tax Due or Refund

6. Enter your tax from table on page 2, or from  
line 15, page 4.....\$2,570.00

7. How much have you paid on your 1944 income tax?

(B) By payments on 1944 Declaration of

Estimated Tax .....\$1,500.00 \$1,500.00

8. If your tax (item 6) is larger than payments  
(item 7), enter Balance of Tax Due here.....\$1,070.00

9. If your payments (item 7) are larger than your  
tax (item 6), enter the Overpayment here.....Int. 5.35

\$1,075.35

If you filed a return for a prior year, what was the latest year?  
1943.

To which Collector's office was it sent? Reno.

To which Collector's office did you pay amount claimed in item 7  
(B), above? Reno.

Is your wife (or husband) making a separate return for 1944?  
Yes.

If "Yes," write below:

Name of wife (or husband) Helen L. Remmer.

Collector's office to which sent, Reno.

I declare under the penalties of perjury that this return (including any accompanying schedules and statements has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Taxpayers figures. 4/12/45.

/s/ ELMER F. REMMER.

(Signature of taxpayer)

[Stamped]: Received June 9, 1947, Internal Revenue Agent in Charge, San Francisco. Computation proved. Not Investigated. Filed.

[Shown in crayon in margins]: Ext. Cash 1075.35.

**Tax Computation—For Persons Not Using Tax Table on Page 2**

1. Enter amount shown in item 5, page 1. This is  
your Adjusted Gross Income.....\$10,000
2. Enter Deductions ..... 500
3. Subtract line 2 from line 1. Enter the difference  
here. This is your Net Income.....\$ 9,500
4. Enter your Surtax Exemptions (\$500 for each  
person listed in item 1, page 1)..... 500
5. Subtract line 4 from line 3. Enter the difference  
here. This is your Surtax Net Income.....\$ 9,000
6. Use the Surtax Table in instruction sheet to figure  
your Surtax on amount entered on line 5.  
Enter the amount here.....\$ 2,300
7. Copy the figure you entered on line 3, above.....\$ 9,500
8. Enter your Normal-Tax Exemption..... 500
9. Subtract line 8 from line 7, and enter the  
difference here .....\$ 9,000

10. Enter here 3 percent of line 9. This is your  
Normal Tax .....\$ 270
15. Subtract line 14 from line 11. Enter the difference  
here and in item 6, page 1. This is your tax.....\$ 2,570.00

[Endorsed]: Filed November 29, 1951.

PLAINTIFF'S EXHIBIT No. 2

Form 1040—Treasury Department Internal Revenue Service

U. S. Individual Income Tax Return 1944  
For Calendar Year 1944

or fiscal year beginning....., 1944, and ending April, 1945  
File Code, 155; Serial No. 300135; District, Nevada.  
(Cashier's Stamp) 420 Rec'd With Remittance 88 Apr. 13, 1945.

Name, Helen L. Remmer,  
Address, Cal-Neva,  
Lake Tahoe, Nevada.

Your Exemptions

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives with 1944 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.  
Your name, Elmer F. Remmer.  
Helen L. Remmer, wife.

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, Before Pay-Roll Deductions for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

Print Employer's Name, various.

Where Employed ....., C.P. Basis.....Amount \$20,000

5. Add amounts in items 2, 3, and 4, and  
enter the total here.....\$10,000

If item 5 includes income of both husband and wife, show husband's income here, \$10,000.00; wife's income here, \$10,000.00.

## Tax Due or Refund

6. Enter your tax from table on page 2, or from line 15, page 4.....\$2,570.00

7. How much have you paid on your 1944 income tax?

(B) By payments on 1944 Declaration of Estimated Tax .....\$1,500.00    \$1,500.00

8. If your tax (item 6) is larger than payments (item 7), enter Balance of Tax Due here.....\$1,070.00

9. If your payments (item 7) are larger than your tax (item 6), enter the Overpayment here.....Int.    5.35  
\$1,075.35

If you filed a return for a prior year, what was the latest year? 1943.

To which Collector's office was it sent? Reno.

To which Collector's office did you pay amount claimed in item 7 (B), above? Reno.

Is your wife (or husband) making a separate return for 1944? Yes.

If "Yes," write below:

Name of wife (or husband) Elmer F. Remmer.

Collector's office to which sent, Reno.

I declare under the penalties of perjury that this return (including any accompanying schedules and statements has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Taxpayers figures. 4/12/45.

/s/ HELEN L. REMMER.  
(Signature of taxpayer)

[Stamped]: Received May 3, 1948, Internal Revenue Agent in Charge, San Francisco. Computation proved. Not Investigated. Filed.

[Shown in crayon in margins]: Ext. Cash 1075.35.

## Tax Computation—For Persons Not Using Tax Table on Page 2

1. Enter amount shown in item 5, page 1. This is your Adjusted Gross Income.....\$10,000
2. Enter Deductions ..... 500
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income.....\$ 9,500
4. Enter your Surtax Exemptions (\$500 for each person listed in item 1, page 1)..... 500

*United States of America*

3523

5. Subtract line 4 from line 3. Enter the difference here. This is your Surtax Net Income.....\$ 9,000
6. Use the Surtax Table in instruction sheet to figure your Surtax on amount entered on line 5.  
Enter the amount here.....\$ 2,300
7. Copy the figure you entered on line 3, above.....\$ 9,500
8. Enter your Normal-Tax Exemption..... 500
9. Subtract line 8 from line 7, and enter the difference here .....\$ 9,000
10. Enter here 3 percent of line 9. This is your Normal Tax .....\$ 270
15. Subtract line 14 from line 11. Enter the difference here and in item 6, page 1. This is your tax.....\$ 2,570.00

[Endorsed]: Filed November 29, 1951.

PLAINTIFF'S EXHIBIT No. 3

Form 1040—Treasury Department Internal Revenue Service

U. S. Individual Income Tax Return 1945

For Calendar Year 1945

or fiscal year beginning ....., 1945, and ending June, 1946

File Code, 153; Serial No. 320025; District, Nevada.

(Cashier's Stamp) 88 Received June 14, 1948, Coll. Int. Rev., Dist. Nev.

Assessment

Tax \$3,500.00, Int. By Coll., Total \$3,500.00, Initials IT:Cl:p-7,  
Sec. Orig. Tax I.P.C., List June 17, 1949, Acet. No. 519004.

Name, Elmer F. Remmer,

Address, Cal Neva Lodge,

Lake Tahoe, Nevada.

Occupation, Gaming.

Your Income

2. See Schedule return Helen L. Remmer.
  4. If you received any other income, give details on page 2 and enter the total here.....\$65,859.36
  5. Add amounts in items 2, 3, and 4 and enter the total here.
- Wife's income here, 1/2.....\$32,929.68



6. Enter your tax from table on page 4, or from line 15,  
page 3 C.P.B. .... \$13,072.02
7. How much have you paid on your 1945 income tax?
- (B) By payments on 1945 Declaration of  
Estimated Tax .....  $\frac{1}{2}$  \$6,000      6,000.00  
Taxpayers figures without audit.
8. If your tax (item 6) is larger than payments  
(item 7), enter Balance of Tax Due here..... \$ 7,072.02
9. If your payments (item 7) are larger than your tax  
(item 6), enter the Overpayment here..... Int \$ 141.44
- \$ 7,213.46

If you filed a return for a prior year, what was the latest year?  
1944.

To which Collector's office was it sent? Reno.

To which Collector's office did you pay amount claimed in item  
7 (B), above? Reno.

Is your wife (or husband) making a separate return for 1945?  
Yes.

If "Yes," write below:

Name of wife (or husband) Helen L. Remmer.

Collector's office to which sent Reno, Nevada.

I declare under the penalties of perjury that this return (in-  
cluding any accompanying schedules and statements) has been  
examined by me and to the best of my knowledge and belief is  
a true, correct, and complete return.

(Date) 6/14/46.

/s/ ELMER F. REMMER.  
(Signature of taxpayer)

[Stamped]: April 14, 1947, April 20, and May 9, 1950, Re-  
ceived, Internal Revenue Agent in Charge, San Francisco.

[Figures shown in margin]: Ext. 6/15. 200, 649, 50, 4, 300,  
0, 1, 2, 3, 8, 4, 2.

# United States of America

3525

## Income Tax Return 1945

Elmer F. Remmer and Helen L. Remmer

J. Billington, DBA, San Diego Social Club and  
21 Club, El Cerrito, California.....\$19,829.74

Deduct 10% Commission to following

Anthony Riggiardo, 110 Eddy.....\$1,982.97

Andrew Desemoiue, 110 Eddy ..... 1,982.97

Dave Billington, 110 Eddy ..... 1,982.97

\$5,948.91 \$ 5,948.91

Net Income.....\$13,880.83

Peachart, Kessel & Grunewald, DBA, A 311 Club,  
El Cerrito, California .....\$ 584.92

Menlo Club, Mason and Eddy..... 43,613.50

110 Eddy Club ..... 5,532.50

186 Day & Night Club..... 1,350.00

186 Day & Night Cigar Store..... 897.61

\$65,859.36

C.P.B. 1/2 Helen L. Remmer.....\$32,929.68

## Deductions

### Contributions

St. Thomas Aquinas Catholic Church, Reno...\$2,500

Donations to various organizations

Menlo Club, 21 Club,

Day & Night Cigar Store, 110 Eddy..... 750

Allowable Contributions (not in excess of 15 percent  
of item 5, page 1) .....\$ 3,250.00

## Taxes

Personal Taxes on Home and Auto.....\$ 226.00

Total Taxes ..... 226.00

## Miscellaneous (See Instructions)

Entertainment and Travel for Production

of Income .....\$ 575.00

Total Miscellaneous Deductions ..... 575.00

Total Deductions.....\$ 4,041.00

**Tax Computation—For Persons Not Using Tax Table on Page 4**

1. Enter amount shown in item 5, page 1. This is your  
Adjusted Gross Income .....\$32,929.68
2. Enter Deductions ..... 4,041.00
3. Subtract line 2 from line 1. Enter the difference  
here. This is your Net Income.....\$28,888.68
4. Enter your Normal-Tax Exemption.. 500.00
5. Subtract line 4 from line 3. Enter the  
difference here .....\$28,388.68
6. Enter here 3 percent of line 5. This is your  
Normal Tax .....\$ 851.04
7. Copy the figure you entered on  
line 3, above .....\$28,888.68
8. Enter your Surtax Exemptions..... 500.00
9. Subtract line 8 from line 7. Enter the  
difference here. This is your Surtax  
Net Income .....\$28,388.68
10. Use the Surtax Table in instruction sheet to fig-  
ure your Surtax on amount entered on line 9.  
Enter the amount here..... 12,220.98
11. Add the figures on lines 6 and 10, and enter the  
total here .....\$13,072.02
15. Subtract line 14 from line 11. Enter the differ-  
ence here and in item 6, page 1. This is your tax..\$13,072.02

[Endorsed]: Filed November 29, 1951.

**PLAINTIFF'S EXHIBIT No. 4**

Form 1040—Treasury Department Internal Revenue Service

U. S. Individual Income Tax Return 1945

For Calendar Year 1945

or fiscal year beginning ....., 1945, and ending June, 1946

File Code, 155; Serial No. 320026; District, Nevada.

(Cashier's Stamp) 88 Received June 14, 1946, Coll. Int. Rev.,  
Dist. Nev.

**Assessment**

Tax \$3,500.00, Int. By Coll., Total \$3,500.00, Initials IT:Cl:p-7,  
Sec. Orig. Tax I.P.C., List June 17, 1949, Acct. No. 519005.

Name, Helen L. Remmer,  
Address, Cal Neva Lodge,  
Lake Tahoe, Nevada.  
Occupation, Housewife.

Your Income

2. See Return of Elmer F. Remmer, Other 1/2.
6. Enter your tax from table on page 4, or from line 15,  
page 3 1/2 C.P.B.....\$14,074.29
7. How much have you paid on your 1945 income tax?  
(B) By payments on 1945 Declaration of  
Estimated Tax .....1/2 \$6,000 6,000.00  
Taxpayers figures without audit.
8. If your tax (item 6) is larger than payments  
(item 7), enter Balance of Tax Due here.....\$ 8,074.29
9. If your payments (item 7) are larger than your tax  
(item 6), enter the Overpayment here.....Int. \$ 161.48  
\$ 8,235.77

If you filed a return for a prior year, what was the latest year?  
1944.

To which Collector's office was it sent? Reno.

To which Collector's office did you pay amount claimed in item  
7 (B), above? Reno.

Is your wife (or husband) making a separate return for 1945?  
Yes.

If "Yes," write below:

Name of wife (or husband) Elmer F. Remmer.

Collector's office to which sent Reno, Nevada.

I declare under the penalties of perjury that this return (in-  
cluding any accompanying schedules and statements) has been  
examined by me and to the best of my knowledge and belief is  
a true, correct, and complete return.

/s/ HELEN L. REMMER.

(Signature of taxpayer)

[Stamped]: Nov. 25, 1946, April 20, and May 9, 1950, Re-  
ceived, Internal Revenue Agent in Charge, San Francisco.

[Figures shown in margin]: Ext. 6/15. 200, 300, 0, 1, 4, 3,  
8, 4, 2.

Income Tax Return 1945

Elmer F. Remmer and Helen L. Remmer

J. Billington, DBA, San Diego Social Club and  
21 Club, El Cerrito, California.....\$19,829.74

Deduct 10% Commission to following

Anthony Riggiardo, 110 Eddy.....\$1,982.97

Andrew Desemoiue, 110 Eddy ..... 1,982.97

Dave Billington, 110 Eddy ..... 1,982.97

\$5,948.91 \$ 5,948.91

Net Income.....\$13,880.83

	Carried forward.....	\$13,880.83
Peachart, Kessel & Grunewald, DBA, A 311 Club, El Cerrito, California .....		\$ 584.92
Menlo Club, Mason and Eddy.....		43,613.50
110 Eddy Club .....		5,532.50
186 Day & Night Club.....		1,350.00
186 Day & Night Cigar Store.....		897.61

---

\$65,859.36

C.P.B. 1/2 Helen L. Remmer.....\$32,929.68

#### Deductions

#### Contributions

1/2 St. Thomas Aquinas Catholic Church, Reno.....\$ 2,500.00

---

Total Deductions.....\$ 2,500.00

#### Tax Computation—For Persons Not Using Tax Table on Page 4

1. Enter amount shown in item 5, page 1. This is your  
Adjusted Gross Income .....\$32,929.68
2. Enter Deductions ..... 2,500.00
3. Subtract line 2 from line 1. Enter the difference  
here. This is your Net Income.....\$30,429.68
4. Enter your Normal-Tax Exemption.. 500.00
5. Subtract line 4 from line 3. Enter the  
difference here .....\$29,929.68
6. Enter here 3 percent of line 5. This is your  
Normal Tax .....\$ 897.89
7. Copy the figure you entered on  
line 3, above .....\$30,429.68
8. Enter your Surtax Exemptions..... 500.00
9. Subtract line 8 from line 7. Enter the  
difference here. This is your Surtax  
Net Income .....\$29,929.68
10. Use the Surtax Table in instruction sheet to fig-  
ure your Surtax on amount entered on line 9.  
Enter the amount here..... 13,176.40
11. Add the figures on lines 6 and 10, and enter the  
total here .....\$14,074.29
15. Subtract line 14 from line 11. Enter the differ-  
ence here and in item 6, page 1. This is your tax..\$14,074.29

[Endorsed]: Filed November 29, 1951.

*United States of America*

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PLAINTIFF'S EXHIBIT No. 68

Treasury Department  
Internal Revenue Service  
Reno, Nevada

Office of Deputy Collector  
District of Nevada

In Replying Refer to  
Elmer F. Remmer  
110 Eddy St.  
San Francisco, California

March 20, 1945.

My dear Mr. Remmer:

Attached you will find two (2) Forms 1040 made out in the name of Mrs. Remmer and yourself. You will sign those forms and return them to this office immediately, otherwise you will be penalized, as they have to come in here the 15th of March. There is also, two (2) copies, one for each of you enclosed.

You will note that you owe \$1070 each. I took it off of your estimate for last summer, which has made you a \$20,000 basis. If there is any change to be made, we will make it on your first visit to Reno, as you may want to raise the amount. Bring all of the data from the different places, so that we may file a proper amended return.

At this time you are supposed to make a declaration of expected income for year 1945. This should be filed now or March 15.

With very kind regards, I am

Yours sincerely,

/s/ PAT MOONEY,  
Chief Field Deputy.

PM:ke

Encl:

[Endorsed]: Filed December 6, 1951.

3530

*Elmer F. Remmer vs.*

PLAINTIFF'S EXHIBIT No. 78

Form 1065—Treasury Dept., Internal Revenue Service

United States

1944

Partnership Return of Income

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1944

or fiscal year beginning ....., 1944, and ending ....., 1945

Serial No. 8704686.

[Stamped]: 94 Received Feb. 14, 1945, Coll. Int. Rev., 1st  
Dist. Cal.

B-R Smoke Shoppe

50 Mason Street

San Francisco, California

Gross Income—13. Total income in items 3 to 12.....\$1,200.00

Deductions—26. Ordinary net income (item 13  
less item 25) .....\$1,200.00

Schedule I.—Partners' Shares of Income and Credits.

(See Instruction for Schedule I)

1. Name and address of each partner	2. Ordinary net income less interest on Government obligations, etc.
(a) Elmer Remmer, Orinda, California, 1/2.....	\$600.00
(b) Wm. E. Kyne, 975 Lawton Ave., San F., 1/4.....	300.00
(c) Sylvan Lando, 611 Marina Blvd., San F. 1/4.....	300.00
Totals.....	\$1,200.00

Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ A. B. SLATER, 2/10/45  
(Name of firm, etc.) Self

/s/ WM. E. KYNE, partner, 2/10/45  
975 Lawton Ave., San Francisco

Subscribed and sworn to before me this 13th day of Feb., 1945.

/s/ RUTH NATUSCH,

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

[Stamped]: Accepted.

[Endorsed]: Filed December 7, 1951.

PLAINTIFF'S EXHIBIT No. 81

Form 1065—Treasury Dept., Internal Revenue Service

United States

1944

Partnership Return of Income

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1944

or fiscal year beginning .....,1944, and ending ....., 1945

Serial No. 8705832.

[Stamped]: 94 Received Feb. 14, 1945, Coll. Int. Rev., 1st  
Dist. Cal.

One Ten Eddy

110 Eddy Street

San Francisco 2, California

Business or Profession, Cocktail Bar.

Gross Income

- |  |                           |
|--|---------------------------|
| 1. Gross receipts from business or profession.....                                 | \$85,200.80               |
| 2. Less cost of goods sold:  |                           |
| (a) Inventory at beginning of year..   | \$22,510.00               |
| (b) Merchandise bought for sale.....   | 36,275.45                 |
| (d) Total of lines (a), (b) and (c)..<   | \$58,785.45               |
| (e) Less inventory at end of year....  | 28,131.45                 |
|  | <u>30,654.00</u>          |
| 3. Gross profit (or loss) from business or profession<br>(item 1 less item 2)..... | <u>\$54,546.80</u>        |
| 13. Total income in items 3 to 12.....   | <u><u>\$54,546.80</u></u> |

Deductions

- |  |                    |
|--|--------------------|
| 14. Salaries and wages (do not include<br>compensation for partners) ..... | \$24,187.00        |
| 15. Rent .....   | 2,520.00           |
| 16. Repairs .....  | 2,710.27           |
| 17. Interest on indebtedness (explain in Schedule F) ..                    | 47.07              |
| 18. Taxes (explain in Schedule C).....                                     | 5,798.50           |
| 21. Depreciation (explain in Schedule E).....                              | 822.00             |
| 24. Other deductions authorized by law<br>(See Schedule Attached) .....    | 5,780.79           |
| 25. Total deductions in items 14 to 24.....                                | <u>\$41,865.63</u> |
| 26. Ordinary net income (item 13 less item 25).....                        | <u>\$12,681.17</u> |



## Schedule C.—Taxes. (See Instruction 18)

Nature	Amount
State Liquor, Beer and Wine .....	\$ 525.00
Federal Liquor, Beer and Wine .....	27.50
Federal Machine License .....	10.00
City and County, San Francisco .....	42.76
Payroll Taxes .....	1,993.24
State Board of Equalization, assessed on predecessor business for claimed shortage on Sales Tax returns....	3,200.00
Total (enter as item 18, page 1).....	\$5,798.50

Schedule F.—Explanation of Deductions Claimed in  
Items 17 and 24

Item No.	Explanation	Amount
17. Interest:		
	State Board of Equalization .....	\$45.60
	Bank of America .....	1.47
		<u>\$47.07</u>

## One Ten Eddy

Schedule "F"	Other Deductions	Year 1944
Accounting .....\$480.00	Music .....\$ 58.50	
Advertising ..... 865.95	Newspapers ..... 75.00	
Cartage & Storage... 132.58	Office Supplies ..... 44.36	
Donations ..... 167.00	Service ..... 195.31	
Flowers ..... 68.99	Shortages ..... 211.77	
Garbage Hauling ... 128.00	Special Police ..... 270.00	
Gas & Electric ..... 346.30	Supplies Misc. .... 495.84	
Ice ..... 862.01	Telephone ..... 27.94	
Insurance ..... 675.64	Water ..... 90.50	
Laundry ..... 412.47	Miscellaneous ..... 172.63	
		<hr/>
		\$5,780.79

Schedule I.—Partners' Shares of Income and Credits.  
(See Instruction for Schedule I)

1. Name and address of each partner	2. Ordinary net income less interest on Government obligations, etc.
(a) Wm. E. Kyne, 975 Lawton Ave., San F., 1/4.....	\$ 3,170.29
(b) F. Cavani, 1922 Taylor St., San F., 1/4.....	3,170.30
(c) Thos. C. Turner, 383 Grand Ave., Oakland, 1/4.....	3,170.29
(d) E. Remmer, Orinda, California, 1/4.....	3,170.29
Totals.....	<u>\$12,681.17</u>

Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ A. B. SLATER, 2/10/45  
(Name of firm, etc.) Self

/s/ WM. E. KYNE, partner, 2/10/45  
975 Lawton St., San Francisco

Subscribed and sworn to before me this 13th day of Feb., 1945.

/s/ RUTH NATUSCH,

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

[Stamped]: Accepted.

[Endorsed]: Filed December 7, 1951.

PLAINTIFF'S EXHIBIT No. 82

Form 1065—Treasury Dept., Internal Revenue Service

United States 1945

Partnership Return of Income

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1945

or fiscal year beginning ....., 1945, and ending ....., 1946

Serial No. 8701657.

[Stamped]: 94 Received Mar. 15, 1946, Coll. Int. Rev., 1st Dist. Cal. Received Oct. 17, 1946, Internal Revenue Agent in Charge, San Francisco.

One Ten Eddy  
110 Eddy Street  
San Francisco 2, California

Gross Income

1. Gross receipts from business or profession.....\$100,978.85
2. Less cost of goods sold:
  - (a) Inventory at beginning of yr...\$28,131.45
  - (b) Merchandise bought for sale.... 32,821.15
  - (d) Total of lines (a), (b), (c).....\$60,952.60
  - (e) Less inventory at end of year.. 25,059.62      35,892.98

3. Gross profit (or loss) from business or profession (item 1 less item 2).....	\$ 65,085.87
13. Total income in items 3 to 12.....	<u>\$ 65,085.87</u>
Deductions	
14. Salaries and wages (do not include compensation for partners) .....	\$ 27,988.50
15. Rent .....	2,520.00
16. Repairs .....	594.46
18. Taxes (explain in Schedule C).....	2,891.22
21. Depreciation (explain in Schedule E).....	882.00
24. Other deductions authorized by law (explain in Schedule F).....	7,987.42
25. Total deductions in items 14 to 24.....	<u>\$ 42,863.60</u>
26. Ordinary net income (item 13 less item 25).....	<u>\$ 22,222.27</u>
	<u>\$ 65,049.62</u>

## Schedule C.—Taxes. (See Instruction 18)

State Liquor, Beer and Wine.....	\$ 525.00
Federal Liquor, Beer and Wine.....	27.50
Federal Machine .....	10.00
City and County .....	619.44
Payroll .....	1,262.33
Internal Revenue Dept., assessed on predecessor business for claimed admission tax.....	446.95
Total.....	<u>\$2,891.22</u>

## Schedule F.—Explanation of Deductions Claimed in Items 17 and 24

One Ten Eddy	Schedule "F"	Other Deductions.	
Accounting .....\$	800.00	Music .....\$	10.75
Advertising .....	282.00	Newspapers .....	78.15
Storage & Cartage..	71.14	Office Supplies .....	20.55
Flowers .....	55.62	Service .....	197.50
Garbage Disposal ..	122.00	Shortages .....	286.03
Gas, Heat & Power	433.50	Special Police .....	180.00
Ice .....	1,015.72	Supplies, Misc. ....	732.56
Insurance .....	632.00	Telephone .....	34.74
Laundry .....	508.13	Water .....	100.97
Legal .....	1,690.00	Misc. Expense .....	736.06
Total.....			<u>\$7,987.42</u>

Schedule I.—Partners' Shares of Income and Credits.  
(See Instruction for Schedule I)

1. Name and address of each partner	2. Ordinary net income less interest on Government obligations, etc.
(a) Wm. E. Kyne, 975 Lawton St., San F., 1/4.....	\$ 5,532.50
(b) Frank Cavani, 1922 Taylor St., San F., 1/4.....	5,532.50
(c) Thos. C. Turner, 383 Grand Ave., Oakland, 1/4.....	5,532.50
(d) Elmer Remmer, Orinda, Calif., 1/4.....	5,532.50
Totals.....	\$22,130.02

Affidavit. (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ HAROLD A. MAUNDRELL, 3/13/46  
(Name of firm, etc.) Self

/s/ FRANK CAVANI, 3/13/46  
1922 Taylor St., S. F.

Subscribed and sworn to before me this 13th day of Mar., 1946.

/s/ NAN G. SCULLEY, Notary.

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed December 7, 1951.

PLAINTIFF'S EXHIBIT No. 84

Form 1065—Treasury Dept., Internal Revenue Service

United States

1944

Partnership Return of Income

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1944

or fiscal year beginning ....., 1944, and ending ....., 1945

Serial No. 8705015.

[Stamped]: 94 Received Feb. 14, 1945, Coll. Int. Rev., 1st Dist. Cal. Received Sept. 23, Internal Revenue Agent in Charge, San Francisco. Accepted.

Day-Nite Cigar Store  
186 Eddy Street  
San Francisco 2, Calif.

Business or Profession, Cigars, Liquors, Periodicals.

## Gross Income

1. Gross receipts from business or profession.....	\$96,779.17
2. Less cost of goods sold:	
(a) Inventory at beginning of yr....	\$ 11,889.00
(b) Merchandise bought for sale....	90,529.97
(d) Total of lines (a), (b), (c)....	\$102,418.97
(e) Less inventory at end of year..	24,747.27
	<u>77,671.70</u>
3. Gross profit (or loss) from business or profession (item 1 less item 2) .....	\$19,107.47
13. Total income in items 3 to 12.....	<u>\$19,107.47</u>

## Deductions

14. Salaries and wages (do not include compensation for partners) .....	\$11,384.98
15. Rent .....	1,200.00
16. Repairs .....	7.22
17. Interest on indebtedness (explain in Schedule F) .....	17.84
18. Taxes (explain in Schedule C).....	976.02
21. Depreciation (explain in Schedule E).....	245.84
24. Other deductions authorized by law (See schedule attached) .....	3,023.10
25. Total deductions in items 14 to 24.....	<u>\$15,829.94</u>
26. Ordinary net income (item 13 less item 25).....	\$ 3,277.53

## Schedule C.—Taxes. (See Instruction 18)

## Day-Nite Cigar Store

State Liquor Taxes .....	\$110.00
Federal Liquor Taxes .....	27.50
Federal Machine Taxes.....	110.00
Payroll Taxes .....	722.52
City and County, San Francisco.....	6.00
Total.....	<u>\$976.02</u>

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### Day-Nite Cigar Store

Schedule "F"	Other Deductions	Year 1944	
Accounting .....	\$460.00	Service .....	\$148.86
Advertising .....	284.94	Supplies .....	43.86
Insurance .....	226.70	Telephone .....	206.71
Laundry .....	32.45	Water .....	23.10
Light & Gas .....	401.23	Window Cleaning ...	37.29
Scavenger .....	109.00	Misc. Expenses .....	23.90
			<u>\$1,998.04</u>

1. Name and address of each partner	2. Ordinary net income less interest on Government obligations, etc.
(a) Wm. E. Kyne, 975 Lawton St., San F., 1/3.....	\$1,092.51
(b) Syl Lando, 611 Marina Blvd., San F., 1/3.....	1,092.51
(c) E. Remmer, Orinda, Calif., 1/3.....	1,092.51
<b>Totals.....</b>	<b>\$3,277.53</b>

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ WM. E. KYNE, partner, 2/10/45  
975 Lawton Ave., San Francisco

Subscribed and sworn to before me this 13th day of Feb., 1945.

/s/ RUTH NATUSCH.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

[Endorsed]: Filed December 7, 1951.

## PLAINTIFF'S EXHIBIT No. 85

Form 1065—Treasury Dept., Internal Revenue Service

United States

1945

## Partnership Return of Income

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1945

or fiscal year beginning ....., 1945, and ending ....., 1946

Serial No. 8704457.

[Stamped]: 94 Received May 15, 1946, Coll. Int. Rev., 1st  
Dist. Cal. Received Oct. 17, 1946, Internal Revenue Agent in  
Charge, San Francisco.

Day-Nite Cigar Store  
186 Eddy Street  
San Francisco 2, California

## Gross Income

- |  |                     |
|--|---------------------|
| 1. Gross receipts from business or profession.....                                 | \$104,102.16        |
| 2. Less cost of goods sold:  |                     |
| (a) Inventory at beginning of yr....   | \$ 24,747.27        |
| (b) Merchandise bought for sale.....   | 85,877.93           |
| (d) Total of lines (a), (b), (c).....  | \$110,625.20        |
| (e) Less inventory at end of year..  | 23,694.59           |
|  | <u>86,530.61</u>    |
| 3. Gross profit (or loss) from business or profession<br>(item 1 less item 2)..... | \$ 17,571.55        |
| 12. Other income—Telephone Concessions.....  | 1,483.82            |
| 13. Total income in items 3 to 12.....   | <u>\$ 19,055.37</u> |

## Deductions

- |  |                     |
|--|---------------------|
| 14. Salaries and wages (do not include compensation<br>for partners) ..... | \$ 11,554.75        |
| 15. Rent .....   | 1,800.00            |
| 16. Repairs .....  | 37.20               |
| 17. Interest on indebtedness (explain in Schedule F) .....                 | 8.45                |
| 18. Taxes (explain in Schedule C).....                                     | 976.02              |
| 21. Depreciation (explain in Schedule E).....                              | 208.32              |
| 24. Other deductions authorized by law.<br>Schedule Attached .....         | 1,777.80            |
| 25. Total deductions in items 14 to 24.....                                | <u>\$ 16,362.54</u> |
| 26. Ordinary net income (item 13 less item 25).....                        | \$ 2,692.83         |

## Schedule C.—Taxes. (See Instruction 18)

State Liquor Taxes .....	\$110.00
Federal Liquor Taxes .....	27.50
Federal Machine Taxes .....	110.00
Payroll Taxes .....	722.52
City and County, San Francisco.....	6.00

Total (enter as item 18, page 1).....\$976.02

Schedule F.—Explanation of Deductions Claimed  
in Items 17 and 24

Accounting .....	\$495.00	Supplies .....	\$100.49
Insurance .....	259.84	Telephone .....	161.83
Laundry .....	23.20	Water .....	47.07
Light, Heat & Power... 401.05		Window Cleaning .....	36.00
Scavenger .....	45.00	Misc. Expense .....	208.32

Total.....\$1,777.80

Schedule I.—Partners' Shares of Income and Credits.  
(See Instruction for Schedule I)

1. Name and address of each partner	2. Ordinary net income less interest on Government obligations, etc.
(a) Wm. E. Kyne, 975 Lawton St., San Francisco.....	\$ 897.61
(b) Elmer Remmer, Orinda, Calif. ....	897.61
(c) Sylvan Lando, 611 Marina Blvd., San Francisco....	897.61
Totals.....	\$2,692.83

## Questions

3. Was a return of income filed for preceding year? Yes. If so, to which collector's office was it sent? San Francisco.
4. Check whether this return was prepared on the cash [ X ] or accrual [ ] basis.

## Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ ELMER F. REMMER.

Subscribed and sworn to before me this 10th day of May, 1946.

/s/ JOHN A. BURNS.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires April 12, 1949.



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*Elmer F. Remmer vs.*

Treasury Department  
Internal Revenue Service  
100 McAllister Street Building  
San Francisco 2, Calif.

Office of the Collector  
First District of California

In Replying Refer to jsb:710

March 15, 1946.

Day-Nite Cigar Store  
186 Eddy Street  
San Francisco, Calif.

Dear Sirs:

Receipt is acknowledged of your letter of recent date requesting for the reasons therein given, an extension of time within which to file your partnership return of income for the calendar year ended December 31, 1945.

An extension of time to May 15, 1946, is hereby granted within which to file Form 1065.

This Letter or a copy thereof, Must Be Attached to the return when filed, as authority for the extension of time herein granted.

Very truly yours,

JOSEPH D. NUNAN, JR., Commissioner.

By /s/ JAMES G. SMYTH,  
Collector.

Form 1065

[Endorsed]: Filed December 7, 1951.

PLAINTIFF'S EXHIBIT No. 87

Form 1120—Treasury Dept., Internal Revenue Service.

United States

Corporation Income and Declared Value Excess-Profits

Tax Return for Calendar Year 1943

or fiscal year beginning July 1, 1943, and ending June 30, 1944

[Stamped]: 7017; Dec.; Tentative Return.

One Eighty Six Club

186 Eddy Street

San Francisco, California

Serial No. 410016.

(Cashier's Stamp): Received With Remittance Sept. 22, 1944,  
Collector of Int. Rev., First Dist. Calif.

Kind of business: Social Club.

Normal-Tax Net Income Computation

31. Net income for declared value excess-profits tax computation (item 15 minus item 30) .....	\$13,265.15
33. Total of lines 31 and 32.....	\$13,265.15
34. Less: Declared value excess-profits tax .....	None
35. Net income .....	\$13,265.15
37. Adjusted net income .....	\$
38. Less: Income subject to excess-profits tax (From Form 1121) .....	\$1,544.16
39. Dividends received credit (85% of column 2, Schedule E, but not in excess of 85% of item 37 minus item 38, above) .....	1,544.16
40. Normal-tax net income .....	\$11,720.99
Total Income and Declared Value Excess-Profits Taxes	
41. Total income tax (line 28 or 50, page 2, whichever is applicable) .....	\$3,064.67
43. Balance of income tax.....	\$ 3,064.67
44. Total declared value excess-profits tax (line 8, page 2) .....	None
45. Total income and declared value excess-profits taxes due (One-fourth \$766.17) .....	\$ 3,064.67

Affidavit. (See Instruction E)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

/s/ BERT BUSTERNA, Pres.

/s/ WM. E. KYNE, Secy.

Subscribed and sworn to before me this 22nd day of September, 1944.

/s/ RUTH NATUSCH.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

Affidavit. (See Instruction E)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

/s/ A. B. SLATER.

Subscribed and sworn to before me this 22nd day of September, 1944.

/s/ RUTH NATUSCH.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

Line No.	Declared Value Excess-Profits Tax Computation. (See Computation Instructions)	Rate	Amt. of Tax
1.	Net income for declared value excess-profits tax computation (item 31, page 1) .....		\$13,265.15
2.	Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1943 (or for year ended June 30, 1944, if your income tax fiscal year began in 1943 and ended on or after July 31, 1944) .....		\$200,000.00
3.	10 percent of line 2 .....		\$ 20,000.00
4.	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 37 minus item 38, page 1) .....		20,000.00
5.	Balance subject to declared value excess-profits tax (line 1 minus total of lines 3 and 4) .....		None
6.	Amount taxable at 6.6 percent (5 percent of line 2, but not more than line 5); and tax .....	6.6%	None
7.	Balance taxable at 13.2 percent (line 5 minus line 6, column 1); and tax .....	13.2%	None
8.	Total declared value excess-profits tax (total of line 6, column 3, and line 7, column 3) .....		None
Income Tax Computation. (See Computation Instructions)			
Normal Tax Computation			
Domestic Corporations With Normal-Tax Net Incomes Not Over \$50,000			
9.	Normal-tax net income (item 40, page 1) .....		\$11,720.99
10.	Portion of line 9 (not in excess of \$5,000); and tax at 15 percent .....	15%	\$ 750.00
11.	Portion of line 9 (in excess of \$5,000 and not in excess of \$20,000); and tax at 17 percent .....	17%	1,142.57
14.	Total normal tax (total tax in column 3 of lines 10, 11, 12, and 13) .....		\$ 1,892.57

Line No.	Surtax Computation	Rate	Amt. of Tax
17.	Net income (item 35, page 1).....		\$13,265.15
18.	Less: Income subject to excess-profits tax.....		\$1,544.16
20.	Dividends paid on certain preferred stock if taxpayer is a public utility.....		1,544.16
21.	Surtax net income .....		\$11,720.99
	Corporations With Surtax Net Incomes Not Over \$50,000		
22.	Portion of line 21 (not in excess of \$25,000); and tax at 10 percent (or 12 percent in the case of a consolidated return).....	10%	\$ 1,172.10
24.	Total surtax in column 3 of lines 22 and 23.....		\$ 1,172.10
	Corporations With Surtax Net Incomes of Over \$50,000		
27.	Total normal and surtax (line 14 or 16, plus line 24 or 26, whichever is applicable) .....		\$ 3,064.67
28.	Total tax (line 27 or line 33, Schedule C).....		\$ 3,064.67

Copy

Treasury Department  
Internal Revenue Service  
100 McAllister Street  
San Francisco 2, California

One Eighty Six Club  
186 Eddy Street  
San Francisco, California

September 15, 1944.

Sirs:

Receipt is acknowledged of your letter of recent date requesting for reasons therein given, extension of time within which to file your return of income for the fiscal year ended June 30, 1944.

Provided a Tentative Return Is Filed With the Collector of Revenue for Your District on or Before September 22, 1944, and Payment Made at That Time of at Least One-Fourth of the Total Estimated Tax Thereon to Be Due, you are hereby granted an extension of time to October 15, 1944, within which to file Form 1120.

Any deficiency in the first installment of tax will bear interest at the rate of one-half per cent per month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of taxpayer and the estimated amount, if any, of the tax due. The items and schedules on the form need not be filled in.

This Letter, or a copy thereof, must be Attached to the tentative and completed returns as authority for the extension of time herein granted.

To completed return when filed should be plainly marked "completed return."

Very truly yours,

Joseph D. Nunan, Jr., Commissioner.

By Harold A. Berliner,  
Collector.

Questions

1. Date of incorporation July 9, 1939.
2. State or country California.
3. State collector's office where the corporation's return for the preceding year was filed First California.
4. The corporation's books are in care of Wm. E. Kyne. Located at 186 Eddy Street, San Francisco, Cal.
5. Number of places of business One.
7. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code? No.

8. Is this a consolidated return? No.
  10. Is this return made on the basis of cash receipts and disbursements? Yes.
  11. Did the corporation at any time during its taxable year have in its employ more than eight individuals? Yes. If answer is "yes," has the corporation in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate? No.
  12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower None.
  13. Did the corporation make a return of information on Forms 1096 and 1099 or Forms V-2 and W-2 for the calendar year 1943 (see Instruction G-(1) )? Yes.
  14. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? No.
- Excess-Profits Tax. (See Instructions for Form 1121)
- (a) Is an excess-profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes.

Form 1121—Treasury Dept., Internal Revenue Service

United States

1943

Corporation Excess-Profits Tax Return

For Calendar Year 1943

or fiscal year beginning July 1, 1943, and ending June 30, 1944

One Eighty Six Club

186 Eddy Street

San Francisco, California

Serial No. 801462.

(Cashier's Stamp): Received With Remittance Sept. 22, 1944,  
Collector of Int. Rev., First Dist. Calif.

[Stamped]: 7017; Tentative Return.

# Excess-Profits Tax Computation

1. Excess profits net income (line 16, Schedule A).....	\$13,265.15	
2. Specific exemption .....	\$5,000	\$ 7,500.00
4. Excess profits credit—based on invested capital (line 41, Schedule C).....		4,220.99
6. Total of items 2 to 5.....		\$11,720.99
7. Difference between item 1 and item 6.....		\$ 1,544.16

*United States of America*

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8. Adjusted excess profits net income (item 7, column 1, or item 7, column 2, whichever is applicable) .....	\$ 1,544.16
9. 92.5 percent of item 8.....	\$ 1,428.35
10. Net income (computed without regard to the credit provided by section 26 (e) ) (item 35, page 1, Form 1120) .....	\$13,265.15
12. Surtax net income (computed without regard to the credit provided by section 26 (e) ).....	\$11,720.99
13. 80 percent of item 12.....	9,376.79
14. Income tax under Chapter 1 (other than section 102) for the taxable year (item 41, page 1, Form 1120) .....	3,064.67
15. Excess of item 13 over item 14.....	6,312.12
16. Item 9, or item 15, whichever is lesser.....	\$ 1,428.35
18. Excess profits tax:	
(a) Item 16 minus item 17.....	\$1,428.35
(c) Item 18 (a) or item 18 (b), whichever is applicable .....	\$ 1,428.35
20. Item 18 (c) minus item 19.....	\$ 1,428.35
22. Item 20 minus item 21.....	\$ 1,428.35
24. Excess profits tax due (item 22 plus item 23, or item 22 minus item 23, whichever is applicable)....	\$ 1,428.35
Post-War Refund of Excess Profits Tax and Credit for Debt Retirement	
25. Balance of excess profits tax (item 18 (c), above) (One-fourth \$357.09) .....	\$ 1,428.35
26. Credit allowable under sections 780 and 781 (10 percent of item 25) .....	\$ 142.84
29. Net post-war refund credit (item 26 minus item 28) .....	\$ 142.84

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of



his knowledge and belief, a true, correct, and complete return made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

/s/ BERT BUSTERNA, Pres.

/s/ WM. E. KYNE, Secy.

Subscribed and sworn to before me this 22nd day of September, 1944.

/s/ RUTH MATUSCH.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the excess-profits tax liability of the person for whom this return has been prepared of which, I/we have any knowledge.

/s/ A. B. SLATER.

(Person preparing the return)

Subscribed and sworn to before me this 22nd day of September, 1944.

/s/ RUTH NATUSCH.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

#### Questions

- (a) Date of incorporation July 7, 1939.
- (b) State or country California.
- (c) Collector's office in which your income tax return for the taxable year was filed 1st California.
- (d) Is this a consolidated return? No.
- (e) In computing the excess profits credit under the invested capital method, do you elect to include in excess profits net income interest received on, reduced by the amount of amortizable bond premium under section 125 None.
- (f) Are you a transferor or transferee No.
- (g) Does this return involve an adjustment of excess profits tax liability No.

Schedule A.—Excess Profits Net Income Computation

Line No.	Invested Capital Credit Method
1. Normal-tax net income (computed without allowance of credit for income subject to excess profits tax and without allowance of dividends received credit) (item 37, page 1, Form 1120) .....	\$13,265.15
7. Total of lines 1 to 6.....	\$13,265.15
18. Excess profits net income computed under income credit method or invested capital credit method (line 16, or line 16 minus line 17 in case of a life insurance company) .....	\$13,265.15

4/30/45

Form 707 Will Be Forwarded When Available.

Treasury Department  
Internal Revenue Service  
100 McAllister Street  
San Francisco 2, California

One Eighty Six Club  
186 Eddy Street  
San Francisco, California

September 15, 1944.

Sirs:

Receipt is acknowledged of your letter of recent date requesting for the reasons therein given, extension of time within which to file your return of income for the fiscal year ended June 30, 1944.

Provided a Tentative Return Is Filed With the Collector of Internal Revenue for Your District on or Before September 22, 1944, and Payment at That Time of at Least One-Fourth of the Total Estimated Tax Shown Thereon to Be Due, you are hereby granted an extension of time to October 15, 1944, within which to file Form 1121.

Any deficiency in the first installment of tax will bear interest at the rate of one-half per cent per month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of the taxpayer and the estimated amount, if any, of the tax due. The items and schedules on the form need not be filled in.

This Letter, or copy thereof, must be Attached to the tentative and completed returns as authority for the extension of time herein granted.

This completed return when filed should be plainly marked  
 "completed return."

Very truly yours,

Joseph D. Nunan, Jr., Commissioner.

By Harold A. Berliner,  
 Collector.

**Schedule C.—Excess Profits Credit—Based on Invested Capital**  
**Equity Invested Capital at the Beginning of the Taxable Year**  
 (See Instructions for Schedule C, lines 1 to 12, inclusive)

- |  |             |
|--|-------------|
| 1. Money paid in for stock, or as paid-in surplus, or<br>as a contribution to capital..... | \$42,500.00 |
| 4. (a) Accumulated earnings and profits \$10,262.32  |             |
| (d) Accumulated earnings and profits (item   |             |
| 4 (a) ) as adjusted by item 4 (b) and (c).....   | 10,262.32   |
| 8. Total of lines 1 to 7.....  | \$52,762.32 |
| 14. Equity invested capital at beginning of taxable<br>year (line 8 minus line 13).....    | \$52,762.32 |

**Average Addition to Equity Invested Capital**  
**During the Taxable Year**

(See Instructions for Schedule C, lines 1 to 12, inclusive)

- |                                  |             |
|----------------------------------|-------------|
| 22. Total of lines 14 to 21..... | \$52,762.32 |
|----------------------------------|-------------|

**Average Reduction in Equity Invested Capital**  
**During the Taxable Year**

(See Instructions for Schedule C, lines 28 to 41, inclusive)

- |   |               |
|---|---------------|
| 28. Average equity invested capital (line 22 minus<br>line 27) .....                    | \$52,762.32   |
| 31. Average invested capital (line 28 plus line 30)....                                 | \$52,762.32   |
| 36. Invested capital (line 31 minus line 35).....                                       | \$52,762.32   |
| 37. Portion of line 36 (not in excess of \$5,000,000);<br>and credit at 8 percent ..... | \$4,220.99 8% |
| 41. Excess profits credit—based on invested capital<br>(total of lines 37 to 40).....   | \$ 4,220.99   |

[Endorsed]: Filed December 7, 1951.

PLAINTIFF'S EXHIBIT No. 87-A

Form 1120—Treasury Dept., Internal Revenue Service.

United States  
Corporation Income and Declared Value Excess-Profits  
Tax Return for Calendar Year 1944  
or fiscal year beginning July 1, 1943, and ending June 30, 1944

One Eighty Six Club  
186 Eddy Street  
San Francisco, California

Kind of business: Social Club.

File Code 553

Serial No. 410016

District 1-Calif.

(Cashier's Stamp): Received With Remittance Nov. 15, 1944,  
Collector of Int. Rev., First Dist. Calif.

[Stamped]: Field; 8658; Dec.; Posting Dec. 11, 1944; Ex-  
tension Granted to Nov. 15, 1944; Revenue Agent in Charge,  
Received Jan. 9, 1946, San Francisco.

[Marginal notations]: 9/22/44 Tent. Ret. 766.17, \$357.09  
Paid 9/22; St.; First Payment C \$564.14; 751.

Normal-Tax Net Income Computation  
Deductions

31. Net income for declared value excess-profits tax computation (item 15 minus item 30) (See schedule attached)		\$6,620.00
34. Total of lines 31, 32, and 33		\$6,620.00
35. Less: Declared value excess-profits tax	None	
36. Net income		\$6,620.00
37. Less: Interest on certain obligations	None	
38. Adjusted net income		\$6,620.00
39. Less: Adjusted excess profits Net Income	None	
Dividends received	None	None
41. Normal-tax net income		\$6,620.00
Total Income and Declared Value Excess-Profits Taxes		
42. Total income tax (line 28 or 50, page 2, whichever is applicable)		\$1,687.40
44. Balance of income tax		\$1,687.40
46. Total income and declared value excess-profits taxes due (See schedule inside)		\$1,687.40

Affidavit. (See Instruction E)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

/s/ ATTILIO CASSELINI, Vice-Pres.

/s/ WM. E. KYNE, Secretary.

Subscribed and sworn to before me this 15th day of November, 1944.

/s/ LOUIS H. MOOSER, JR., Dept. Coll.

Affidavit. (See Instruction E)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

/s/ A. B. SLATER.

(Person preparing the return)

Subscribed and sworn to before me this 15th day of November, 1944.

/s/ LOUIS H. MOOSER, JR., Dept. Coll.

Line No.	Declared Value Excess-Profits Tax Computation. (See Computation Instructions)	Rate	Amt. of Tax
1.	Net income for declared value excess-profits tax computation (item 31, page 1).....		\$ 6,620.00
2.	Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1944 (or for year ended June 30, 1945, if your income tax fiscal year began in 1944 and ended on or after July 31, 1945).....		\$200,000.00
3.	10 percent of line 2.....		\$ 20,000.00
4.	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 38 minus item 39, page 1).....		20,000.00
5.	Balance subject to declared value excess-profits tax (line 1 minus total of lines 3 and 4).....		None
6.	Amount taxable at 6.6 percent (5 percent of line 2, but not more than line 5); and tax.....	6.6%	None
7.	Balance taxable at 13.2 percent (line 5 minus line 6, column 1); and tax.....	13.2%	None
8.	Total declared value excess-profits tax (total of line 6, column 3, and line 7, column 3).....		None
Income Tax Computation. (See Computation Instructions)			
Normal Tax Computation			
9.	Domestic Corporations With Normal-Tax Net Incomes Not Over \$50,000		
	Normal-tax net income (item 41, page 1).....		\$ 6,620.00
10.	Portion of line 9 (not in excess of \$5,000); and tax at 15 percent.....	15%	\$ 750.00
11.	Portion of line 9 (in excess of \$5,000 and not in excess of \$20,000); and tax at 17 percent.....	17%	275.40
14.	Total normal tax (total tax in column 3 of lines 10, 11, 12, and 13).....		\$ 1,025.40

Line No.	Surtax Computation	Rate	Amt. of Tax
17.	Net income (item 36, page 1).....		\$ 6,620.00
20.	Less: Dividends paid on certain preferred stock if taxpayer is a public utility .....		None
21.	Surtax net income .....		\$ 6,620.00
Corporations With Surtax Net Incomes Not Over \$50,000			
22.	Portion of line 21 (not in excess of \$25,000); and tax at 10 percent (or 12 percent in the case of a consolidated return).....	10%	\$ 662.00
23.	Portion of line 21 (in excess of \$25,000 and not in excess of \$50,000); and tax at 22 percent (or 24 percent in the case of a consolidated return).....	22%	662.00
Corporations With Surtax Net Incomes of Over \$50,000			
27.	Total normal tax and surtax (line 14 or 16, plus line 24 or 26, whichever is applicable) .....		\$ 1,687.40
28.	Total tax (line 27, or line 31 Schedule C).....		\$ 1,687.40

*United States of America*

3555

One Eighty Six Club  
186 Eddy Street—San Francisco, Calif.

Summary of Income and Excess Profit Taxes  
Year Ending June 30, 1944

Final Returns

Form 1120 .....	\$1,687.40	
Form 1121 .....	None	\$1,687.40

Tentative Returns

Form 1120 .....	\$3,064.67
Form 1121 .....	1,428.35

\$4,493.02

25% paid 10/15/'44 .....	\$1,123.26
--------------------------	------------

Additional amount due for fiscal year July 1, 1943-  
June 30, 1944—as per check submitted herewith.....\$ 564.14

Copy

Treasury Department  
Internal Revenue Service  
100 McAllister Street Building  
San Francisco 2, Calif.

Office of The Collector  
First District of Calif.

In replying refer to mgm: 710  
One Eighty Six Club,  
186 Eddy Street,  
San Francisco, Calif.

October 15, 1944.

Final Extension

Gentlemen:

Receipt is acknowledged of your request for a further extension of time within which to file a complete return of income for the fiscal year ended June 30, 1944.

The records of this office indicate that a previous extension of time has been granted which expires October 15, 1944.

A further extension of time to November 15, 1944, is hereby granted within which to file the completed return, Form 1120 and pay the tax shown thereon to be due.

In all cases where an extension of time is granted, interest is collectible at the rate of one-half of one per cent a month from the due date of each installment up to and including the date of payment.

This Letter, or a copy thereof, must be Attached to the completed return when filed as authority for the extension of time herein granted.

Very truly yours,

JOSEPH D. NUNAN, JR., Commissioner.

By: /s/ HAROLD A. BERLINER,  
Collector.



One Eighty Six Club  
186 Eddy Street—San Francisco, Calif.

## Schedule 1:

During the month of June, 1944, Louis H. Mooser, Jr., Deputy Collector from the office of the Collector of Internal Revenue at San Francisco, California, called at the office of the above stated corporation and examined its books and records for the fiscal period ending June 30, 1943, and required said corporation to file forms 1120, 1121 and 707 for said period.

These returns were filed under Section 2606 of the I.R. Code, which gives a deputy collector the authority to file such returns where either no records are kept or where records were not adequately kept.

In the case of the One Eighty Six Club, the records reported only the net daily take and were therefore not adequately kept and this was the status of the accounts of said corporation, up to and including June, 1944, the date on which Deputy Collector Mooser made his audit.

Mr. Mooser determined from an examination that he made of daily tally sheets, that the daily average net take was \$70.00. Mr. Mooser believes that this determination would cover the entire period up to June, 1944.

The returns filed by the corporation for the fiscal year ending June 30, 1943, were prepared on this basis and have been approved by the Collector.

In 1944 the taxpayer filed an application with the Deputy Commissioner, Salary Stabilization Unit, for the following annual salaries for its officers:

Bert Busterno, President .....	\$ 6,000.00
Attilio Casselini, Vice President .....	4,000.00
W. E. Kyne, Secretary .....	5,000.00
Sylvan Lando, Treasurer .....	4,000.00
	<hr/>
	\$19,000.00

The Salary Stabilization Unit has approved said application.

The books of account for the fiscal year ending June 30, 1944, disclose a total net take of \$13,265.15.

In preparing the corporate returns (1120 and 1121) for said fiscal year, the corporation is reporting its total net take for the year on the same basis as that which was used by Deputy Collector Mooser: \$70.00 per day— $366 \times \$70.$ —\$25,620.(A)

However, when the returns for the prior period were prepared by the Deputy, no provision was made for compensation of administrative officers; this, however, has now been approved at \$19,000.00 per year by the Salary Stabilization Unit. Therefore, the net taxable corporate income for the fiscal year ending June 30, 1944, is calculated as follows:

(A) Net take on basis of Deputy Collector Mooser's findings (before administrative salaries) .....	\$25,620.00
(B) Administrative salaries allowed by S.S. Unit .....	19,000.00
Net Taxable Income .....	\$ 6,620.00

Questions

1. Date of incorporation July 9, 1939.
2. State or country California.
3. State collector's office where the corporation's return for the preceding year was filed 1st California.
4. The corporation's books are in care of Wm. E. Kyne. Located at 186 Eddy St., San Francisco, Calif.
5. Number of places of business One.
6. Did the corporation during the taxable year have any Government contracts or subcontracts? No.
7. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code? No.
8. Is this a consolidated return? No.
9. If this is not a consolidated return: (a) did the corporation own at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign? No; or (b) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 50 percent or more of the corporation's voting stock? No.
10. Is this return made on the basis of cash receipts and disbursements? Yes.
11. Did the corporation at any time during its taxable year have in its employ more than eight individuals? Yes. If answer is "yes," has the corporation in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate? No.
12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower None.
13. Did the corporation make a return of information on Forms 1096 and 1099 or Form W-2 (or Form W-2a) for the calendar year 1944 (see Instruction G-(1) )? Yes.
14. Has any transaction described in Instruction G-(4) occurred on or after October 8, 1940? No.
15. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? No.

Excess Profits Tax. (See Instructions for Form 1121)

- (a) Is an excess profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes.

## Schedule N.—Excess Profits Net Income Computation

- |   |            |
|---|------------|
| 1. Normal-tax net income (computed without credit for income subject to excess profits tax and dividends received credit) (item 38, page 1) ..... | \$6,620.00 |
| 5. Total of lines 1 to 4.....   | \$6,620.00 |
| 11. Total of lines 6 to 10.....   | \$6,620.00 |

Form 1121—Treasury Dept., Internal Revenue Service

United States

1944

Corporation Excess Profits Tax Return

For Calendar Year 1944

or fiscal year beginning July 1, 1943, and ending June 30, 1944

One Eighty Six Club

186 Eddy Street

San Francisco, California

File Code 553.

Serial No. 801462.

(Cashier's Stamp): Received Nov. 15, 1944, Collector of Int. Rev., First Dist. Calif.

[Stamped]: 8658.

## Excess Profits Tax Computation

- | Item No.   | Invested Capital<br>Credit Method |
|--|-----------------------------------|
| 1. Excess profits net income (line 18, Schedule A)....                         | \$ 6,620.00                       |
| 4. Excess profits credit—based on invested capital (line 40, Schedule C) ..... | 4,220.99                          |
| 5. Unused excess profits credit adjustment (attach schedule) .....             | 14,220.99                         |
| 7. Difference between item 1 and item 6.....                                   | None                              |
| 24. Excess profits tax due.....  | None                              |

## Post-War Refund of Excess Profits Tax and Credit for Debt Retirement

- |  |      |
|--|------|
| 25. Balance of excess profits tax.....               | None |
| 26. Credit allowable under sections 780 and 781..... | None |
| 29. Net post-war refund credit.....                  | None |

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules

and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

/s/ ATTILIO CASSELINI, Vice Pres.

/s/ WM. E. KYNE, Secretary.

Subscribed and sworn to before me this 15th day of November, 1944.

/s/ LOUIS H. MOOSER, JR.,  
Dept. Coll.

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the excess profits tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

/s/ A. B. SLATER.  
(Person preparing the return)

One Eighty Six Club  
186 Eddy Street—San Francisco, Calif.

Summary of Income and Excess Profit Taxes  
Year Ending June 30, 1944

Final Returns

Form 1120 .....	\$1,687.40	
Form 1121 .....	None	\$1,687.40

Tentative Returns

Form 1120 .....	\$3,064.67	
Form 1121 .....	1,428.35	
	\$4,493.02	
25% paid 10/15/44 .....		\$1,123.26

Additional amount due for fiscal year July 1, 1943-  
June 30, 1944—as per check submitted herewith.....\$ 564.14

Schedule A.—Excess Profits Net Income Computation

Line No.	Invested Capital Credit Method
1. Normal-tax net income (computed without allowance of credit for income subject to excess profits tax and without allowance of dividends received credit) (item 38, page 1, Form 1120).....	\$6,620.00

7. Total of lines 1 to 6.....\$6,620.00
18. Excess profits net income computed under income credit method or invested capital credit method (line 16, or line 16 minus line 17 in case of a life insurance company) .....\$6,620.00

## Copy

Treasury Department  
Internal Revenue Service  
100 McAllister Street Building  
San Francisco 2, Calif.

Office of the Collector  
First District of Calif.

In replying refer to mgm: 710

October 15, 1944.

One Eighty Six Club,  
186 Eddy Street,  
San Francisco, California

Gentlemen:

Receipt is acknowledged of your request for a further extension of time within which to file a complete return of income for the fiscal year ended June 30, 1944.

The records of this office indicate that a previous extension of time has been granted which expires October 15, 1944.

A further extension of time to November 15, 1944, is hereby granted within which to file the completed return, Form 1121 and pay the tax shown thereon to be due.

In all cases where an extension of time is granted, interest is collectible at the rate of one-half of one per cent a month from the due date of each installment up to and including the date of payment.

This Letter, or a copy thereof, must be Attached to the completed return when filed as authority for the extension of time herein granted.

Very truly yours,  
JOSEPH D. NUNAN, JR., Commissioner.  
By /s/ HAROLD A. BERLINER,  
Collector.

*United States of America*

3561

**Schedule C.—Excess Profits Credit—Based on Invested Capital  
Equity Invested Capital at the Beginning of the Taxable Year**

(See Instructions for Schedule C, lines 1 to 12, inclusive)

- |  |                    |
|--|--------------------|
| 1. Money paid in for stock, as or paid-in surplus,<br>or as a contribution to capital..... | \$42,500.00        |
| 4. (a) Accumulated earnings & profits.....   | \$10,262.32        |
| (b) Adjustment for transferor's deficit<br>under section 718 (c) (5).....                  | 10,262.32          |
| 8. Total of lines 1 to 7.....  | <u>\$52,762.32</u> |

**Average Addition to Equity Invested Capital During  
the Taxable Year**

(See Instructions for Schedule C, lines 1 to 12, inclusive)

- |                                   |                    |
|-----------------------------------|--------------------|
| 22. Total of lines 14 and 21..... | <u>\$52,762.32</u> |
|-----------------------------------|--------------------|

**Average Reduction in Equity Invested Capital  
During the Taxable Year**

(See Instructions for Schedule C, lines 28 to 40, inclusive)

- |   |                    |
|---|--------------------|
| 28. Average equity invested capital (line 22<br>minus line 27) .....                  | <u>\$52,762.32</u> |
| 31. Average invested capital (line 28 plus line 30)....                               | <u>\$52,762.32</u> |
| 36. Invested capital (line 31 minus line 35).....                                     | <u>\$52,762.32</u> |
| 37. Portion of line 36 (not over \$5,000,000);<br>and credit at 8 percent.....        | \$4,220.99 8%      |
| 40. Excess profits credit—based on invested capital<br>(total of lines 37 to 39)..... | <u>\$ 4,220.99</u> |

[Endorsed]: Filed December 7, 1951.

## PLAINTIFF'S EXHIBIT No. 88

Form 1120—Treasury Dept., Internal Revenue Service.

United States

Corporation Income and Declared Value Excess-Profits

Tax Return for Calendar Year 1944

or fiscal year beginning ....., 1944, and ending ....., 1945

One Eighty Six Club

186 Eddy Street

San Francisco, California

Kind of business: Social Club.

File Code 553.

Serial No. 410070.

District 1-Calif.

(Cashier's Stamp): Received With Remittance Oct. 26, 1945,  
Collector of Int. Rev., First Dist. Calif.

First Payment \$300.00.

[Stamped]: Dec.; 4269; Tentative Return.

## Normal-Tax Net Income Computation

Total Income and Declared Value Excess-Profits Taxes

44. Balance of income tax.....\$1,200.00

Affidavit. (See Instruction E)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

/s/ BERT BUSTERNA, Pres.

/s/ A. B. SLATER, Chief Acct. Officer.

mgm: 710

One Eighty Six Club,

Olympic Hotel,

San Francisco, Calif.

Fiscal

September 14, 1945.

June 30, 1945.

November 15, 1945

October 26, 1945

1120

OR 4524

#15-A

Mailed to:

A. B. Slater

964-A Market St., S.F.

In the case of an application being received too late to permit a tentative to be filed on or before the due date and a later date is set, interest will be added at the rate of six percent per annum to the amount paid with the tentative return.

[Endorsed]: Filed December 7, 1951.

PLAINTIFF'S EXHIBIT No. 88-A

Form 1120—Treasury Dept., Internal Revenue Service.

United States

Corporation Income and Declared Value Excess-Profits

Tax Return for Calendar Year 1944

or fiscal year beginning July 1, 1944, and ending June 30, 1945

One Eighty Six Club

186 Eddy Street

San Francisco, California

Kind of business: Social Club.

File Code 553.

Serial No. 410070.

District 1-Calif.

(Cashier's stamp): Rec'd With Remittance, 94 Nov. 29, 1946,  
Coll. Int. Rev., 1st Dist. Cal., 30.

First Payment \$875.38.

[Stamped]: Internal Revenue Agent in Charge, Received  
Aug. 11, 1947, San Francisco; Field; Extension Granted to  
11/15/45; Computation proved; Copy; Affidavit Attached; Dec.  
1946; 6031.

Normal-Tax Net Income Computation

31. Net income for declared value excess-profits tax computation (item 15 minus item 30) (See Schedule Attached) .....	\$14,450.00
34. Total of lines 31, 32, and 33.....	\$14,450.00
35. Less: Declared value excess-profits tax.....	None
36. Net income .....	\$14,450.00
37. Less: Interest on certain obligations, etc.....	None
38. Adjusted net income .....	\$14,450.00
39. Less: Adjusted excess profits net income from Form 1121 .....	None
Dividends received credit, etc. ....	None
41. Normal-tax net income .....	\$14,450.00
Total Income and Declared Value Excess-Profits Taxes	
42. Total income tax (line 28 or 50, page 2, whichever is applicable) .....	\$3,801.50
44. Balance of income tax .....	\$ 3,801.50
45. Total declared value excess-profits tax (line 8, page 2) .....	None



46. Total income and declared value excess-profits  
taxes due .....\$ 3,801.50

[Pencilled in items 45 and 46]: Int. on \$300.00 from 9/15 to 10-26-46=\$2.04; Int. on \$650.38 from 9/15 to 11-29-46=\$8.00.  
Int. Paid \$10.04.

**Affidavit. (See Instruction E)**

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including any accompanying schedules and statements) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued thereunder.

/s/ BERT BUSTERNA, Pres.

/s/ A. B. SLATER, Chief Acct. Officer.

Subscribed and sworn to before me this 15th day of November, 1945.

/s/ RUTH NATUSCH.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

**Affidavit. (See Instruction E)**

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

/s/ A. B. SLATER.

(Person preparing the return)

Subscribed and sworn to before me this 15th day of November, 1945.

/s/ RUTH NATUSCH.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

Line No.	Declared Value Excess-Profits Tax Computation. (See Computation Instructions)	Rate Amt. of Tax	
		Rate	Amt. of Tax
1.	Net income for declared value excess-profits tax computation (item 31, page 1) .....		\$14,450.00
2.	Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1944 (or for year ended June 30, 1945, if your income tax fiscal year began in 1944 and ended on or after July 31, 1945) .....		\$200,000.00
3.	10 percent of line 2 .....		\$ 20,000.00
4.	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 38 minus item 39, page 1) .....		20,000.00
5.	Balance subject to declared value excess-profits tax (line 1 minus total of lines 3 and 4) .....		None
6.	Amount taxable at 6.6 percent (5 percent of line 2, but not more than line 5); and tax .....	6.6%	None
7.	Balance taxable at 13.2 percent (line 5 minus line 6, column 1); and tax .....	13.2%	None
8.	Total declared value excess-profits tax (total of line 6, column 3, and line 7, column 3) .....		None
Income Tax Computation. (See Computation Instructions)			
Normal Tax Computation			
Domestic Corporations With Normal-Tax Net Incomes Not Over \$50,000			
9.	Normal-tax net income (item 41, page 1) .....		\$14,450.00
10.	Portion of line 9 (not in excess of \$5,000); and tax at 15 percent .....	15%	\$ 750.00
11.	Portion of line 9 (in excess of \$5,000 and not in excess of \$20,000); and tax at 17 percent .....	17%	1,606.50
14.	Total normal tax (total tax in column 3 of lines 10, 11, 12, and 13) .....		\$ 2,356.50

BLURRED COPY

COPY BOUND VERTICALLY

Line No.	Surtax Computation	Rate	Amt. of Tax
17.	Net income (item 36, page 1).....		\$14,450.00
20.	Less: Dividends paid on certain preferred stock if taxpayer is public utility .....		None
21.	Surtax net income .....		\$14,450.00
Corporations With Surtax Net Incomes Not Over \$50,000			
22.	Portion of line 21 (not in excess of \$25,000); and tax at 10 percent (or 12 percent in the case of a consolidated return).....	10%	\$ 1,445.00
23.	Portion of line 21 (in excess of \$25,000 and not in excess of \$50,000); and tax at 22 percent (or 24 percent in the case of a consolidated return).....	22%	None
24.	Total surtax in column 3 of lines 22 and 23.....		<u>\$ 1,445.00</u>
Corporations With Surtax Net Incomes of Over \$50,000			
27.	Total normal tax and surtax (line 14 or 16, plus line 24 or 26, whichever is applicable) .....		\$ 3,801.50
28.	Total tax (line 27, or line 31 Schedule C).....		<u>\$ 3,801.50</u>

BLEED THROUGH- POOR COPY

COPY BOUND VERTICALLY

Copy

Treasury Department  
Internal Revenue Service  
100 McAllister Street Building

mgm : 710

September 14, 1945.

One Eighty Six Club,  
Olympic Hotel,  
San Francisco, Calif.

Sirs:

Receipt is acknowledged of your letter of recent date requesting, for the reasons therein given, extension of time within which to file your return of income for the fiscal year ended June 30, 1945.

Provided a Tentative Return Is Filed With the Collector of Internal Revenue for Your District on or Before October 26, 1945, and Payment Made at That Time of at Least One-Fourth of the Total Estimated Tax Shown Thereon to Be Due, you are hereby granted an extension of time to November 15, 1945, within which to file Form 1120.

Any deficiency in the first installment of tax will bear interest at the rate of one-half of one per cent a month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of taxpayer and the estimated amount, if any, of the tax due. The items and schedules on the form need not be filled in.

This Letter, or a copy thereof, Must Be Attached to the tentative and completed returns as authority for the extension of time herein granted. The completed return when filed, should be plainly marked—"completed return."

Very truly yours,

JOSEPH D. NUNAN, JR., Commissioner.

By /s/ JAMES G. SMYTH, Collector.

Mailed to:

A. B. Slater

964-A Market St., S.F.

In the case of an application being received too late to permit a tentative to be filed on or before the due date and a later date is set, interest will be added at the rate of six per cent per annum to the amount paid with the tentative return.

## Copy

One Eighty Six Club  
186 Eddy Street, San Francisco, California

Summary of Income and Excess Profit Taxes  
Fiscal Year Ending June 30, 1945

## Final Returns

Form 1120 .....	\$3,801.50	
Form 1121 .....	None	\$3,801.50

## Tentative Returns

Form 1120 .....	\$1,200.00
Form 1121 .....	None

Total .....	\$1,200.00
-------------	------------

25% paid 10/26/45 .....	\$ 300.00
-------------------------	-----------

Additional amount due for fiscal year

July 1, 1944-June 30, 1945 .....	\$3,501.50
----------------------------------	------------

Check submitted for 25% thereof .....	\$ 875.38
---------------------------------------	-----------

Copy                      One Eighty Six Club                      Copy  
186 Eddy Street—San Francisco, California

## Schedule 1:

During the month of June, 1944, Louis H. Mooser, Jr., Deputy Collector from the office of the Collector of Internal Revenue at San Francisco, California, called at the office of the above stated corporation and examined its books and records for the fiscal period ending June 30, 1943, and required said corporation to file Forms 1120, 1121 and 707 for said period.

These returns were filed under Section 2606 of the I. R. Code, which gives a deputy collector the authority to file such returns where either no records are kept or where records were not adequately kept.

In the case of the One Eighty Six Club, the records reported only the net daily take and were therefore not adequately kept and this was the status of the accounts of said corporation up to and including June, 1944, the date on which Deputy Collector Mooser made his audit. At the date of this filing—November 14, 1945—the books of account of this corporation are kept on the same basis.

Mr. Mooser determined from an examination that he made of daily tally sheets that the daily average net take was \$70.00. The Returns filed by the Corporation for the fiscal year ending June 30, 1943, were prepared on this basis and have been approved by the Collector.

In 1944, the taxpayer filed an application with the Deputy Commissioner, Salary Stabilization Unit, for annual salaries for its officers which has been approved as follows:

Bert Busterno, President .....	\$4,500.00
Attilio Casselini, Vice President .....	(A) 3,000.00
W. E. Kyne, Secretary .....	(B) 3,600.00
Sylvan Lando, Treasurer .....	3,000.00

(A) Resigned April 15, 1945—no salary paid during the fiscal year 7/1/44-6/30/45.

(B) Served 7½ mos., succeeded by Elmer F. Remmer, who served during the remaining 4½ mos. at the same rate; said W. E. Kyne earning \$2,250.00 and Elmer F. Remmer \$1,350.00.

The books of account for the year 1944, disclose a total net take of \$20,533.15.

In preparing the corporate returns (1120 and 1121) for the fiscal year ending June 30, 1945, the corporation is reporting its total net take for the year on the same basis as that which was used by Deputy Collector Mooser, \$70.00 per day—\$70.00 x 365 = \$25,550.00 (C).

However, when returns for the prior period were prepared by the Deputy, no provision was made for compensation of administrative officers; this, however, has been approved at \$14,100.00 per year by the Salary Stabilization Unit. As stated hereinbefore total salaries actually paid during the fiscal year ending June 30, 1945, were \$11,100.00 (D). Therefore, the net taxable corporate income for the fiscal year ending June 30, 1945, is calculated as follows:

(C) Net take on basis of Deputy Collector Mooser's findings (before administrative salaries paid).....\$25,550.00

(D) Administrative salaries allowed by Salary Stabilization Unit, actually paid by corporation..... 11,100.00

Net Taxable Income.....\$14,450.00

#### Questions

1. Date of incorporation July 9, 1939.
2. State or country California.
3. State collector's office where the corporation's return for the preceding year was filed 1st, California.
4. The corporation's books are in care of Elmer F. Remmer. Located at 186 Eddy St., San Francisco, Calif.
5. Number of places of business One.
6. Did the corporation during the taxable year have any Government contracts or subcontracts? No.
7. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code? No.
8. Is this a consolidated return? No.

9. If this is not a consolidated return: (a) did the corporation own at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign? No; or (b) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 50 percent or more of the corporation's voting stock? No.
10. Is this return made on the basis of cash receipts and disbursements? Yes.
11. Did the corporation at any time during its taxable year have in its employ more than eight individuals? Yes. If answer is "yes," has the corporation in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate? No.
12. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower None.
13. Did the corporation make a return of information on Forms 1096 and 1099 or Form W-2 (or Form W-2a) for the calendar year 1944 (see Instruction G-(1) )? Yes.
14. Has any transaction described in Instruction G-(4) occurred on or after October 8, 1940? No.
15. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? No.

**Excess Profits Tax. (See Instructions for Form 1121)**

- (a) Is an excess profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes.

**Schedule N.—Excess Profits Net Income Computation**

- |   |             |
|---|-------------|
| 1. Normal-tax net income (computed without credit for income subject to excess profits tax and dividends received credit) (item 38, page 1) ..... | \$14,450.00 |
| 5. Total of lines 1 to 4 .....  | \$14,450.00 |
| 11. Total of lines 6 to 10 .....  | \$14,450.00 |

[Stamped]: 51 Rec'd With Remittance Nov. 29, 1946, Coll.  
Int. Rev., 1st Dist. Cal. 30.

Return No. 1120

Affidavit

State of California,  
City and County of San Francisco—ss.

Re: One Eighty Six Club  
186 Eddy Street, San Francisco

Final Return, Fiscal Year Ended June 30, 1945

A. B. Slater, 964-A Market Street, San Francisco, California, appearing before me this 20th day of November, 1946, and being duly sworn, deposes and says that the delinquency in filing Corporate Income Tax return on Form 1120, which should have been filed on or before November 15, 1946, was not due to any intent on his part to evade taxation, but was due entirely to the following causes:—

As noted above, this return was for One Eighty Six Club, 186 Eddy St., San Francisco, on which an extension to November 15, 1945, had been granted and a Tentative Return duly prepared and filed previously as provided for in said extension.

This Final Return was completed and a Cashier's Check—No. 6603433—purchased from Bank of America (11-177) in the amount of \$875.38, attached thereto. This was mailed at Rincon Annex Post Office in Mission Street, San Francisco, on the afternoon of November 15, 1945.

Our first intimation that above return had never gone through the Collector's records came through a telephone call from Mrs. Hart, a Cashier in said office, inquiring as to Why a Final Return had never been filed in this matter. Affiant had turned over all records in this account over to an out of town Auditor and got back the carbon copy of Return 1120 as filed only yesterday, and complete copies are attached hereto. Under the circumstances it would appear that no penalties should be assessed.

/s/ A. B. SLATER.

Subscribed and sworn to before me this 20th day of November, 1946.

/s/ RUTH NATUSCH.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1947.

[Stamped]: 6031.



3572

*Elmer F. Remmer vs.*

Form 1121—Treasury Dept., Internal Revenue Service.

United States

Corporation Excess Profits Tax Return

or fiscal year beginning July 1, 1944, and ending June 30, 1945

One Eighty Six Club

186 Eddy Street

San Francisco, California

File Code 553.

Serial No. 9401640

District 1 Calif.

(Cashier's stamp): 94 Rec'd With Remittance, Nov. 29, 1946,  
Coll. Int. Rev., 1st Dist. Cal.[Stamped]: Internal Revenue Agent in Charge, Received  
Aug. 25, 1947, San Francisco; Copy.[Marginal notations]: No Tentative; See affidavit attached  
to Form 1120—FY—1945; 11-29-46 HA.

## Excess Profits Tax Computation

Item and Inst. No.	Invested Capital Credit Method
1. Excess profits net income (line 18, Schedule A)....	\$14,450.00
4. Excess profits credit—based on invested capital (line 40, Schedule C).....	\$ 5,376.99
5. Unused excess profits credit adjustment (attach schedule) .....	15,376.99
7. Difference between item 1 and item 6.....	None
24. Excess profits tax due (item 22 plus item 23, or item 22 minus item 23, whichever is applicable)....	None

Post-War Refund of Excess Profits Tax and Credit for  
Debt Retirement

25. Balance of excess profits tax (item 18 (c), above)	None
26. Credit allowable under sections 780 and 781 (10 percent of item 25) .....	None
29. Net post-war refund credit (item 26 minus item 28) .....	None

## Schedule A.—Excess Profits Net Income Computation

Line No.	Invested Capital Credit Method
1. Normal-tax net income (computed without allow- ance of credit for income subject to excess profits tax and without allowance of dividends received credit) (item 38, page 1, Form 1120).....	\$14,450.00

7. Total of lines 1 to 6.....\$14,450.00
18. Excess profits net income computed under income credit method or invested capital credit method (line 16, or line 16 minus line 17 in case of a life insurance company) .....\$14,450.00

Copy

Treasury Department  
Internal Revenue Service  
100 McAllister Street Building

mgm : 710  
One Eighty Six Club,  
Olympic Hotel,  
San Francisco, Calif.

September 14, 1945.

Sirs:

Receipt is acknowledged of your letter of recent date requesting, for the reasons therein given, extension of time within which to file your return of income for the fiscal year ended June 30, 1945.

Provided a Tentative Return Is Filed With the Collector of Internal Revenue for Your District on or Before October 26, 1945, and Payment Made at That Time of at Least One-Fourth of the Total Estimated Tax Shown Thereon to Be Due, you are hereby granted an extension of time to November 15, 1945, within which to file Form 1121.

Any deficiency in the first installment of tax will bear interest at the rate of one-half of one per cent a month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of taxpayer and the estimated amount, if any, of the tax due. The items and schedules on the form need not be filled in.

This Letter, or a copy thereof, Must Be Attached to the tentative and completed returns as authority for the extension of time herein granted. The completed return when filed, should be plainly marked—"completed return."

Very truly yours,

JOSEPH D. NUNAN, JR., Commissioner.

By /s/ JAMES G. SMYTH, Collector.

Mailed to:  
A. B. Slater  
964-A Market St., S.F.

## Copy

One Eighty Six Club  
186 Eddy Street, San Francisco, California

Summary of Income and Excess Profit Taxes  
Fiscal Year Ending June 30, 1945

## Final Returns

Form 1120 .....	\$3,801.50	
Form 1121 .....	None	\$3,801.50

## Tentative Returns

Form 1120 .....	\$1,200.00
Form 1121 .....	None

Total .....	\$1,200.00
-------------	------------

25% paid 10/26/45 .....	\$ 300.00
-------------------------	-----------

Additional amount due for fiscal year

July 1, 1944-June 30, 1945 .....	\$3,501.50
----------------------------------	------------

Check submitted for 25% thereof .....	\$ 875.38
---------------------------------------	-----------

Copy                      One Eighty Six Club                      Copy  
186 Eddy Street—San Francisco, California

## Schedule 1:

During the month of June, 1944, Louis H. Mooser, Jr., Deputy Collector from the office of the Collector of Internal Revenue at San Francisco, California, called at the office of the above stated corporation and examined its books and records for the fiscal period ending June 30, 1943, and required said corporation to file Forms 1120, 1121 and 707 for said period.

These returns were filed under Section 2606 of the I. R. Code, which gives a deputy collector the authority to file such returns where either no records are kept or where records were not adequately kept.

In the case of the One Eighty Six Club, the records reported only the net daily take and were therefore not adequately kept and this was the status of the accounts of said corporation up to and including June, 1944, the date on which Deputy Collector Mooser made his audit. At the date of this filing—November 14, 1945—the books of account of this corporation are kept on the same basis.

Mr. Mooser determined from an examination that he made of daily tally sheets that the daily average net take was \$70.00. The returns filed by the Corporation for the fiscal year ending June 30, 1943, were prepared on this basis and have been approved by the Collector.

In 1944, the taxpayer filed an application with the Deputy Commissioner, Salary Stabilization Unit, for annual salaries for its officers which has been approved as follows:

Bert Busterno, President .....	\$4,500.00
Attilio Casselini, Vice President .....	(A) 3,000.00
W. E. Kyne, Secretary .....	(B) 3,600.00
Sylvan Lando, Treasurer .....	3,000.00

(A) Resigned April 15, 1945—no salary paid during the fiscal year 7/1/44-6/30/45.

(B) Served 7½ mos., succeeded by Elmer F. Remmer, who served during the remaining 4½ mos. at the same rate; said W. E. Kyne earning \$2,250.00 and Elmer F. Remmer \$1,350.00.

The books of account for the year 1944, disclose a total net take of \$20,533.15.

In preparing the corporate returns (1120 and 1121) for the fiscal year ending June 30, 1945, the corporation is reporting its total net take for the year on the same basis as that which was used by Deputy Collector Mooser, \$70.00 per day—\$70.00 x 365 = \$25,550.00 (C).

However, when returns for the prior period were prepared by the Deputy, no provision was made for compensation of administrative officers; this, however, has been approved at \$14,100.00 per year by the Salary Stabilization Unit. As stated hereinbefore total salaries actually paid during the fiscal year ending June 30, 1945, were \$11,100.00 (D). Therefore, the net taxable corporate income for the fiscal year ending June 30, 1945, is calculated as follows:

(C) Net take on basis of Deputy Collector Mooser's findings, (before administrative salaries paid).....\$25,550.00

(D) Administrative salaries allowed by Salary Stabilization Unit, actually paid by corporation..... 11,100.00

Net Taxable Income.....\$14,450.00

Schedule C.—Excess Profits Credit—Based on Invested Capital  
Equity Invested Capital at the Beginning of the Taxable Year  
(See Instructions for Schedule C, lines 1 to 12, inclusive)

1. Money paid in for stock, or as paid-in surplus, or as a contribution to capital.....\$42,500.00
4. (a) Accumulated earnings & profits.....\$24,712.32
  - (d) Accumulated earnings and profits (item 4 (a) ) as adjusted by item 4 (b) and (c)..... 24,712.32
8. Total of lines 1 to 7.....\$67,212.32

Average Addition to Equity Invested Capital During the  
Taxable Year

(See Instructions for Schedule C, lines 1 to 12, inclusive)

22. Total of lines 14 and 21.....\$67,212.32

Average Reduction in Equity Invested Capital During  
the Taxable Year

(See Instructions for Schedule C, lines 28 to 40, inclusive)

28. Average equity invested capital (line 22  
minus line 27) .....\$67,212.32

31. Average invested capital (line 28 plus line 30).....\$67,212.32

36. Invested capital (line 31 minus line 35).....\$67,212.32

37. Portion of line 36 (not over \$5,000,000);  
and credit at 8 percent .....\$5,376.99 8%

40. Excess profits credit—based on invested capital  
(total of lines 37 to 39).....\$ 5,376.99

[Endorsed]: Filed December 7, 1951.

PLAINTIFF'S EXHIBIT No. 89

Form 1065—Treasury Dept., Internal Revenue Service

United States

1945

Partnership Return of Income

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1945

or fiscal year beginning ....., 1945, and ending ....., 1946

File Code 1952; Serial No. 8704459; District 1 Calif.

[Stamped]: 94 Received May 15, 1946, Coll. Int. Rev., 1st  
Dist. Cal. Received May 22, 1947, Internal Revenue Agent in  
Charge, San Francisco.

[Penciled in margin]: RAR 41—Bond & Conf, no chg 40-  
38-37; 649.

Menlo Club

30 Turk Street

San Francisco, California

Business or Profession, Social Club.

Gross Income

1. Gross receipts from business or profession.....\$558,632.00

2. Less cost of goods sold:

(b) Promotion Expense .....\$286,837.75

(d) Total of lines (a), (b), (c).....\$286,837.75

(e) Less inventory at end of year..... 286,837.75

# United States of America

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3. Gross profit (or loss) from business or profession  
(item 1 less item 2).....\$271,794.25
4. Income (or loss) from other partnerships, syn-  
dicates, pools, etc—Tiny's Waffle Shop & Bar.  
(Statement attached) ..... (5,509.75)
13. Total income in items 3 to 12.....\$266,284.50

## Deductions

14. Salaries and wages (do not include compensation  
for partners) .....\$114,491.87
15. Rent ..... 5,200.00
16. Repairs ..... 1,059.14
18. Taxes (explain in Schedule C)..... 4,679.95
21. Depreciation (explain in Schedule E)..... 200.00
24. Other deductions authorized by law (explain in  
Schedule F) (Statement Attached) ..... 19,892.90
25. Total deductions in items 14 to 24.....\$145,523.86
26. Ordinary net income (item 13 less item 25).....\$120,760.64

## Schedule C.—Taxes. (See Instruction 18)

- |                                       |            |
|---------------------------------------|------------|
| Social Security: Employer.....        | \$1,262.19 |
| Unemployment Reserve Employer.....    | 3,407.91   |
| Personal Property Tax .....           | 9.85       |
| Total (enter as item 18, page 1)..... | \$4,679.95 |

## Schedule E.—Depreciation. (See Instruction 21)

1. Kind of property—Furniture and Fixtures.
2. Acquired 5/1/45. 3. Cost—\$2,000.00.
7. Estimated life used in accumulating depreciation—10 yrs.
8. Estimated remaining life from beginning of year—10 years.
9. Depreciation allowable this year—\$200.00.
- Total (enter as item 21, page 1).....\$200.00

## Tiny's Waffle Shop

### Profit and Loss Statement

Period—May 1 to December 31, 1945

### Income:

- |                  |                     |
|------------------|---------------------|
| Sales—Food ..... | \$126,588.08        |
| Sales—Bar .....  | 43,152.89           |
|                  | <u>\$169,740.97</u> |

3578

*Elmer F. Remmer vs.*

## Purchases:

Liquor .....	\$ 7,851.32	
Beer .....	4,266.36	
Food .....	48,312.22	
		<u>\$60,429.90</u>

## Inventory May 1, 1945 Dec. 31, 1945

Liquor, Beer ....	\$25,675.50	\$22,891.46	
Food .....	5,523.00	2,446.31	5,860.73

Cost of Sales.....	66,290.63
--------------------	-----------

Gross Profit .....	<u>\$103,450.34</u>
--------------------	---------------------

## Expense:

Payroll .....	\$73,849.84	
Rent .....	8,000.00	
Sales Tax .....	4,159.50	
Advertising .....	541.10	
Ice .....	383.16	
Laundry .....	2,175.38	
Bar Supplies .....	664.36	
House Supplies .....	1,846.40	
Licenses and Federal Stamps .....	652.58	
Scavenger—Cleaning .....	431.00	
Insurance .....	2,054.86	
Social Security Tax .....	716.06	
Unemployment Reserves Tax .....	1,933.38	
Repairs and Maintenance .....	3,222.89	
Telephone .....	158.41	
Bar Service .....	128.71	
Miscellaneous .....	3,024.42	
Light, Heat and Water.....	1,673.23	
Office Supplies .....	39.24	
Taxes: Miscellaneous .....	244.35	105,898.87
Loss From Operations .....		<u>(2,448.53)</u>

## Other Income:

Coin Machines .....	960.50
---------------------	--------

	<u>(1,488.03)</u>
--	-------------------

## Other Charges:

## Depreciation:

Tiny's Waffle Shop .....	\$ 3,870.00	
Neon Sign .....	100.00	
Furniture and Equipment .....	171.72	4,021.72
Net Loss.....		<u>(5,509.75)</u>

[Figures shown in italics appeared in red on original.]

## Schedule I.—Partners' Shares of Income and Credits.

(See Instruction for Schedule I)

1.	2. Total	3. Profit	4. Wages
(a) Elmer F. Remmer 30 Turk Street, 40%....	\$43,613.50	\$43,613.50	
(b) William E. Kyne, 30 Turk Street, 15%....	16,355.06	16,355.06	
(c) Masse Dito, 30 Turk Street, 10%....	14,583.90	10,903.38	\$3,680.52
(d) Oscar F. Nelson, 30 Turk Street, 10%....	11,548.88	10,903.38	645.50
(e) Harold H. Maundrell, 30 Turk Street, 10%....	13,003.37	10,903.37	2,100.00
(f) William E. Fricker, 30 Turk Street, 10%....	13,804.25	10,903.37	2,900.88
(g) Thomas C. Turner, 30 Turk Street, 5%....	7,851.68	5,451.68	2,400.00
Totals.....	\$120,760.64	\$109,033.74	\$11,726.90

1. Name and address of each partner, etc.
2. Ordinary net income less interest on Government obligations, etc., subject to surtax only (item 26, page 1, less item 7(a), page 1).
3. Net short-term gain (or loss) from sale or exchange of capital assets (from Schedule G Summary, line 1, column 4).
4. Net long-term gain (or loss) from sale or exchange of capital assets (from Schedule G Summary, line 2, column 4).

## Questions

1. Date of organization May 1, 1945.
2. Nature of organization—Partnership.
3. Was a return of income filed for preceding year? No.
4. Check whether this return was prepared on the cash [ X ] or accrual [ ] basis.
5. State whether inventories at the beginning and end of the taxable year, etc.—No Inventory.



6. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company, as defined in section 501 of the Internal Revenue Code? No.
7. Was return of information on Forms 1096 and 1099, or Form W-2a, filed for the calendar year 1945? Yes. (See Instruction H.)

Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ ELMER F. REMMER.

Subscribed and sworn to before me this 10th day of May, 1946.

/s/ JOHN F. BURNS.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires April 12, 1949.

Treasury Department  
Internal Revenue Service  
100 McAllister Street Building  
San Francisco 2, Calif.

Office of the Collector  
First District of California  
In Replying Refer to jsb:710

March 15, 1946.

Tiny's Waffle Shop, Bar & Menlo Club  
18-24 Turk Street  
San Francisco, California

Dear Sirs:

Receipt is acknowledged of your letter of recent date requesting for the reasons therein given, an extension of time within which to file your partnership return of income for the calendar year ended December 31, 1945.

An extension of time to May 15, 1946, is hereby granted within which to file Form 1065.

This Letter or a copy thereof, Must Be Attached to the return when filed, as authority for the extension of time herein granted.

Very truly yours,

JOSEPH D. NUNAN, JR., Commissioner.

By /s/ JAMES G. SMYTH,  
Collector.

Form 1065

*United States of America*

3581

Menlo Club  
30 Turk Street,  
San Francisco.

May 10, 1946.

The Collector of Internal Revenue,  
San Francisco, California.

Dear Sir:

In submitting the accompanying Partnership Return, taxpayer desires to state that the daily records of the Cash Receipts and Promotion Expenses of the Menlo Club were inadvertently destroyed in mistake for other papers, and were consequently unavailable for computation. Disbursements for rent, salaries and wages, cards, and all other expenses for which receipts were taken separately and recorded are available, and have been properly reported.

In order to submit what is believed to be more than a fair return to the Government, the cash receipts and promotion expenses for a like period in the preceding year of 1944 have been used as a basis of income after deducting an amount of \$6,000.00 per month from the promotion expense, thus increasing the income.

Regretting the necessity for this method of filing, we are,

Very Truly Yours,

MENLO CLUB,

By /s/ ELMER F. REMMER,  
Partner.

Menlo Club  
Income Tax 1945—Period May 1, to Dec. 31

Deductions

Item 24: Other Deductions

Laundry .....	\$ 997.62
General Miscellaneous Expenses .....	85.30
Bank Charges and Returned Checks.....	2,960.43
Garbage Collection .....	80.00
Supplies, Janitor and Miscellaneous .....	745.31
Light and Power .....	1,115.46
Telephone and Telegraph .....	285.48
Playing Cards .....	12,332.34
Poker Chips .....	1,000.00
Stationery and Printing .....	151.45
Water .....	139.51
Total Item 24.....	<u>\$19,892.90</u>

[Endorsed]: Filed December 7, 1951.

## PLAINTIFF'S EXHIBIT No. 113

## Agreement

This Agreement made and entered into this 4th day of November, 1946, by and between Elmer F. Remmer, hereinafter called First Party, and William E. Kyne, hereinafter called Second Party,

## Witnesseth:

Whereas, said first party acquired by purchase on or about the 1st day of May, 1945, that certain social room business known and designated as Menlo Social Club and situated at No. 30 and 32 Turk Street, together with that certain restaurant business known and designated as Tiny's Waffle Shop situated at 24 Turk Street, San Francisco, California, together with that certain bar business formerly known as Tiny's Bar and now known as the Menlo Bar situated at 18 Turk Street, together with the leasehold interest in and to said premises; and

Whereas, the purchase price of said businesses and said leasehold interest was the sum of \$175,000, all of which said sum was paid by said First Party; and

Whereas, it is the desire of First Party to sell, assign and convey to said Second Party a 15% interest in and to said social room business and in and to said restaurant business; and

Whereas, said Second Party is desirous of acquiring a 15% interest in and to said social room business and in and to said restaurant business; and

Whereas, said 15% interest of Second Party in and to said social room and restaurant businesses shall not come into being until there shall have been paid to said First Party out of the profits of said businesses the sum of \$175,000, the original purchase price of said businesses;

Now, Therefore, in consideration of the mutual promises and agreements made by each of the parties hereto with the other, the parties hereto do hereby covenant and agree as follows:

Effective as of May 1, 1945, First Party hereby does assign, transfer, set over and convey to William E. Kyne, Second Party herein, a 15% working interest in and to the profits derived from the operation of the aforesaid social room and restaurant businesses situated as aforesaid;

It is understood and agreed between the parties hereto that said working interest does not represent an actual interest in and to the assets of said business or in or to the leasehold in said premises; that is to say, all moneys credited to the account of Second Party pursuant to said working interest shall be applied on account of Second Party's payment for an actual interest in and to said social club business and restaurant business;

It is further understood and agreed between the parties hereto that an actual interest in and to said businesses and their assets

shall not be acquired by Second Party until First Party has been fully reimbursed in the sum of \$175,000;

First Party does hereby sell, assign, set over, transfer and convey to Second Party a 15% interest in and to said social club business and restaurant business and their assets upon the receipt by First Party of the sum of \$175,000 representing the purchase price expended by First Party as more particularly hereinabove appears;

Second Party shall continue to devote such time and attention as might be required of him by First Party in assisting in the management and operation of said businesses;

In the event of the death of the Second Party herein during the existence of this agreement the interest of said Second Party and his estate shall cease and terminate and the interest of said decedent, together with the interest of his estate, shall revert to and become the property of First Party herein; provided, however, there shall be paid by said First Party or his successors in interest to the legal representative of the estate of Second Party the balance remaining on the account book maintained by First Party in which is set forth the amount of profits accruing to Second Party, if Second Party at the time of his death shall have acquired said working interest;

In the event Second Party shall have acquired at the time of his death an actual interest in said businesses and their assets, then and in that event First Party shall pay forthwith to the legal representative of the estate of Second Party the sum of \$26,250.00 in full payment, satisfaction and discharge of any and all interest acquired by Second Party and/or his estate in said businesses;

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

/s/ ELMER F. REMMER,  
First Party.

/s/ WILLIAM E. KYNE,  
Second Party.

[Endorsed]: Filed December 17, 1951.

PLAINTIFF'S EXHIBIT No. 125-C

			Furniture, Fixtures, Equipment & Lease		Tiny's Restaurant Menlo Bar Menlo Club	
1945	Chk. No.	From whom bought	Description	Cost of Lease	Cost of Equipment & Inventory	Balance
		Gene Schriber				
			Tiny's Bar, 18 Turk St.			
			Tiny's Rest., 24 Turk St.	\$143,801.50	\$31,895.50	\$175,000.00
			Menlo Club, 32 Turk St.			
1945/8/ 8	#1242	Gene Schriber			\$25,000.00	150,000.00
1945/9/ 8	1334	Gene Schriber			15,000.00	135,000.00
1945/9/ 8	35	Gene Schriber			8,500.00	126,500.00
1945/9/ 8	36	Gene Schriber			1,500.00	125,000.00
1946/2/28		Gene Schriber			25,000.00	100,000.00
1946/5/ 1		Gene Schriber			25,000.00	75,000.00
1947/5/ 1		Gene Schriber			25,000.00	50,000.00

[Endorsed]: Filed December 27, 1951.

PLAINTIFF'S EXHIBIT No. 130

Agreement

This Agreement made and entered into this 4th day of November, 1946, by and between Elmer F. Remmer, hereinafter called First Party, and Harold H. Maundrell, hereinafter called Second Party,

Witnesseth:

Whereas, said first party acquired by purchase on or about the 1st day of May, 1945, that certain social room business known and designated as Menlo Social Club and situated at No. 30 and 32 Turk Street, together with that certain restaurant business known and designated as Tiny's Waffle Shop situated at 24 Turk Street, San Francisco, California, together with that certain bar business formerly known as Tiny's Bar and now known as the Menlo Bar situated at 18 Turk Street, together with the leasehold interest in and to said premises; and

Whereas, the purchase price of said businesses and said leasehold interest was the sum of \$175,000, all of which said sum was paid by said First Party; and

Whereas, it is the desire of First Party to sell, assign and convey to said Second Party a 10% interest in and to said social room business and in and to said restaurant business; and

Whereas, said Second Party is desirous of acquiring a 10% interest in and to said social room business and in and to said restaurant business; and

Whereas, said 10% interest of Second Party in and to said social room and restaurant businesses shall not come into being until there shall have been paid to said First Party out of the profits of said businesses the sum of \$175,000, the original purchase price of said businesses;

Now, Therefore, in consideration of the mutual promises and agreements made by each of the parties hereto with the other, the parties hereto do hereby covenant and agree as follows:

Effective as of May 1, 1945, First Party hereby does assign, transfer, set over and convey to Harold H. Maundrell, Second Party herein, a 10% working interest in and to the profits derived from the operation of the aforesaid social room and restaurant businesses situated as aforesaid;

It is understood and agreed between the parties hereto that said working interest does not represent an actual interest in and to the assets of said business or in or to the leasehold in said premises; that is to say, all moneys credited to the account of Second Party pursuant to said working interest shall be applied on account of Second Party's payment for an actual interest in and to said social club business and restaurant business;

It is further understood and agreed between the parties hereto that an actual interest in and to said businesses and their assets

shall not be acquired by Second Party until First Party has been fully reimbursed in the sum of \$175,000;

First Party does hereby sell, assign, set over, transfer and convey to Second Party a 10% interest in and to said social club business and restaurant business and their assets upon the receipt by First Party of the sum of \$175,000 representing the purchase price expended by First Party as more particularly hereinabove appears;

Second Party shall continue to devote such time and attention as might be required of him by First Party in assisting in the management and operation of said businesses;

In the event of the death of the Second Party herein during the existence of this agreement the interest of said Second Party and his estate shall cease and terminate and the interest of said decedent, together with the interest of his estate, shall revert to and become the property of First Party herein; provided, however, there shall be paid by said First Party or his successors in interest to the legal representative of the estate of Second Party the balance remaining on the account book maintained by First Party in which is set forth the amount of profits accruing to Second Party, if Second Party at the time of his death shall have acquired said working interest;

In the event Second Party shall have acquired at the time of his death an actual interest in said businesses and their assets, then and in that event First Party shall pay forthwith to the legal representative of the estate of Second Party the sum of \$17,500.00 in full payment, satisfaction and discharge of any and all interest acquired by Second Party and/or his estate in said businesses;

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

/s/ ELMER F. REMMER,  
First Party.

/s/ HAROLD H. MAUNDRELL,  
Second Party.

[Endorsed]: Filed December 20, 1951.

## PLAINTIFF'S EXHIBIT No. 140

## Furniture, Fixtures, Equipment and Buildings

1945 No. Ch.	From whom bought	Description	Cost of Lease	Cost of Equip. & Inventory	Pay'ts on Equip.	Credits	Balance
4/30	Gene Schriber.....	Tiny's Bar, 18 Turk St.		\$75,000	\$25,000	\$25,000	\$ 50,000
4/30	Gene Schriber.....	Tiny's Rest., 24 Turk St.					
		Menlo Club, 32 Turk St.					
4/30	Gene Schriber.....	Menlo Club, 32 Turk St.	\$100,000				150,000
8/ 8 1242	Gene Schriber .....					25,000	125,000
9/ 8 1334	Gene Schriber .....					15,000	110,000
9/ 8 1335	Gene Schriber .....					8,500	101,500
9/ 8 1336	Gene Schriber .....					1,500	100,000
2/28/1946	Gene Schriber .....					25,000	75,000

[Endorsed]: Filed December 21, 1951.

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## PLAINTIFF'S EXHIBIT No. 153

Statement of  
William E. Kyne  
Finance Section No. 4  
Separation Center  
Ft. Bragg, N.C.  
made

November 15, 1945, at the Finance Section No. 4,  
Separation Center, Ft. Bragg, N.C.

I, William E. Kyne, being first duly sworn according to law, depose and say:

I am at present a soldier in the U.S. Army and have been for the past nine months. I am married and have one child, who resides with me at 654 Hay St., Fayetteville, N.C. I formerly worked and lived in San Francisco, California.

Prior to my entry into the army, and at the present time the bar known as One-Ten Eddy located in San Francisco, California, is owned by myself, and Elmer Remmer in partnership. We do not own the building, but lease it. The equipment and fixtures are owned by Remmer and me and if they were to be sold the money derived therefrom would go to Remmer and me. Frank Cavani, and Chub Turner do not own any interest in the business, except a working interest, that is, they work for us for a salary and a cut of the profits. Cavani and Turner are in full charge of the business in so far as the purchasing of supplies and the payment of all bills in connection therewith. They both sign the checks for the money spent in the operation of the bar. Cavani and Turner are the actual operators of the bar and are both held accountable to Remmer and me, as the owners of the business. The license for the bar is issued in my name. However, neither Remmer or I do any of the actual work in the operation of the bar, but leave its operation up to Turner and Cavani.

I have carefully read the foregoing statement consisting of one page, have been given an opportunity to make corrections, and have signed it as evidence thereof, and the statement is true to the best of my knowledge and belief.

/s/ WILLIAM E. KYNE.

Subscribed and sworn to before me this 15th day of November, 1945.

/s/ T. L. HON,  
Investigator, A.T.U.

[Shown in pencil]: Case file; #12.

[Endorsed]: Filed January 3, 1952.

## PLAINTIFF'S EXHIBIT No. 163

## 110 Eddy St.

## Summary of Assets and Liabilities

Assets	Source		12/31/44	12/31/45	12/31/46
	Bk. of America, 110 Eddy St., a/c	Bk. of America, W. E. Kyne a/c			
Bk. of America, 110 Eddy St., a/c	Books Ex. #112	Books Ex. #112	216.43	6,141.46b	(1,803.65)c
Bk. of America, W. E. Kyne a/c	Books Ex. #112	Books Ex. #112	1,600.00	1,400.00	1,400.00 <sup>1</sup>
Cash Fund	Bks. Ex. #112 & wk. papers.	Bks. Ex. #112	160.00	428.36	
Prepaid Insurance	Books Ex. #112	Books Ex. #112	552.75	1,050.00	
Prepaid Taxes	Books Ex. #112	Books Ex. #112	28,131.45	25,059.62	26,775.00
Inventory	Returns Ex. #80-83	Returns Ex. #80-83	11,759.61 <sup>2</sup>	13,496.39 <sup>4</sup>	10,200.00 <sup>5</sup>
Furniture and Fixtures	Bks. & Ret. Ex. #112, 80-83.	Bks. & Ret. Ex. #112, 80-83.	1,000.00	1,000.00	1,000.00
Liquor License	Books Ex. #112	Books Ex. #112			
Total Assets			\$43,420.24	\$48,575.83	\$37,571.35
Liabilities					
Accounts Payable	Books Ex. #112	Books Ex. #112	227.01	844.93	
Accrued Sales Tax	Books Ex. #112	Books Ex. #112	735.71	68.50	
Accrued Payroll Taxes	Books Ex. #112	Books Ex. #112			
Accrued Expense	Books Ex. #112	Books Ex. #112			
Depreciation Reserve	Bks. & Ret. Ex. #112, 80-83.	Bks. & Ret. Ex. #112, 80-83.	2,459.00	3,341.00	4,361.00
Total Liabilities			3,421.72	4,254.43	4,361.00
Net Worth			39,998.52	44,321.40	33,210.35
Total Liabilities and Net Worth			\$43,420.24	\$48,575.83	\$37,571.35

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Assets	Source	12/31/43	12/31/44	12/31/45	12/31/46
Capital Accounts Per Books Ex. #112, 112A					
Wm. E. Kyne .....			•3,170.29	6,250.03	11,782.53
Frank Cavani .....			•3,170.30	3,582.18	7,391.40
Thos. C. Turner .....			•3,170.29	613.13	5,415.85
Elmer F. Remmer .....			•3,170.29	3,292.03	8,824.53
Arthur Pratt .....					
Clarence Bent .....		3,206.02			
Wm. E. Kyne Trustee Acct. ....		24,322.33	19,728.23	5,985.44	5,985.44
1943 Net Profit (P. & L. Acct. Books) .....		10,275.73	10,275.73a		
1945 Net Profit .....				22,130.02	
		<u>\$38,004.08</u>	<u>\$42,685.13</u>	<u>\$41,852.82</u>	<u>\$39,399.77</u>

## Notes:

- 1 No general ledger for 1946—receipts & disbursements show no change affecting this account during 1946.  
 2 Books and return agree.  
 3 Books.  
 4 Books.  
 5 Return—no G/L for 1946.
- 1944 profit.  
 a Not credited to capital accts. until 1945.  
 b See Schedule 1 attached.  
 c See Schedule 2 attached.



Schedule 2  
Bank of America, 110 Eddy St.

Book Balance 12/31/45.....\$ 6,141.46

Add: Deposits Per Exhibit #

1946—January C-1 .....	\$ 7,340.59	
February C-2 .....	6,029.15	
March C-3 .....	5,549.38	
April C-4 .....	5,325.87	
May C-5 .....	4,504.15	
June C-6 .....	4,615.35	
July C-7 .....	3,785.50	
August C-8 .....	3,595.10	
September C-9 .....	4,081.45	
October C-10 .....	3,462.18	
November C-11 .....	4,207.03	
December C-12 .....	5,361.74	57,857.49
		<hr/>
		\$63,998.95

Deduct: Check Disbursements Per Exhibit #

January .....	\$ 4,397.70
February .....	5,502.02
March .....	7,131.57
April .....	6,028.44
May .....	11,559.84
June .....	5,675.53
July .....	3,675.28
August .....	3,675.19
September .....	4,532.83
October .....	4,137.07
November .....	3,398.51
December .....	5,563.62
	<hr/>
	\$65,277.60

C.C. dated 12/30/46		
(not in books) .....	525.00	\$65,802.60
	<hr/>	<hr/>

Book Balance 12/31/46 ..... (\$1,803.65)

[Endorsed]: Filed January 9, 1952.

## United States of America

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## Day Nite Cigar Store

## Statement of Assets and Liabilities

Assets	Source	Ex. #	12/31/43	12/31/44	12/31/45	12/31/46
Bank of America	Schedule 1 attached	117	(\$ 973.87)	\$ 2,383.26	\$ 161.07	\$ 1,068.52
Cash on Hand	General Ledger	117		965.25		
Cash Change Fund	General Ledger	117		200.00	200.00	
Prepaid Insurance	1946 Partnership Return	86				100.00
Prepaid Licenses—Taxes	General Ledger	117	226.70	165.70	434.00	
Deposits	General Ledger	117	344.10	191.00	49.00	
Account Receivable, 186 Club	General Ledger	117	104.50	104.50	104.50	
Prepaid Insurance and ADT Installation at 52 Mason Whse	General Ledger	117	4,878.58	9,538.04	3,743.55	3,572.67
Furniture and Fixtures	1946 Partnership Return	86			616.44	
Inventory	Returns: 1943 W. E. Kyne	119	2,100.00	2,100.00	2,100.00	2,100.00
	1944 Partnership	84				
	1945 Partnership	85		24,747.27	23,694.59	22,466.44
	1946 Partnership	86				
Total Assets			\$18,569.01	\$40,395.02	\$31,103.15	\$29,307.63

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		12/31/43	12/31/44	12/31/45	12/31/46
<b>Liabilities</b>					
Accrued Sales Tax .....	General Ledger .....	\$ 111.97	\$ 282.36	\$ 218.80	
Accrued Payroll Taxes .....	General Ledger .....	417.58	310.45	30.02	
Sales taxes collected .....	General Ledger .....	254.06			
Accrued expenses .....	General Ledger .....		62.00	9.70	
Reserve for Depreciation based on amounts claimed on partnership returns: 1943—none claimed					
1944 .....	84		245.84		
1945 .....	85			454.16	
1946 .....	86				\$ 664.16
<b>Total Liabilities</b> .....		\$ 783.61	\$ 900.65	\$ 712.68	\$ 664.16
<b>Net Worth</b> .....		\$17,785.40	\$39,494.37	\$30,390.47	\$28,643.47
<b>Net Worth Accounts</b>					
Wm. E. Kyne—Investment Account—General Ledger.....	117	\$15,705.00	\$36,895.22	\$25,078.73	
Profit and Loss .....	117	8,505.80	8,505.80		
Wm. E. Kyne — Personal Account—General Ledger.....	117			1,677.78	
Sylvan Lando .....	117			1,092.51	
E. Remmer .....	117			1,092.51	
Income and expense accounts not closed out as of 12/31/45.....	117			2,667.36	
		\$24,210.80	\$47,586.04	\$37,279.42	

United States of America

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Schedule 1

Day-Nite Cigar Store  
Bank of America

Book Balance 12/31/45 .....\$ 161.07\*

Add:

Deposits 1946 Per Exhibit #117-B

January .....	\$ 9,611.13	
February .....	9,140.25	
March .....	12,132.74	
April .....	10,021.47	
May .....	7,970.61	
June .....	7,719.50	
July .....	10,562.43	
August .....	8,002.42	
September .....	9,811.27	
October .....	13,187.15	
November .....	8,476.21	
December .....	9,237.16	115,872.34

\$116,033.41

Deduct:

Check Disbursements Per Exhibit # 117-B

January .....	\$12,661.13	
February .....	9,197.65	
March .....	9,112.48	
April .....	10,340.11	
May .....	10,169.26	
June .....	5,578.62	
July .....	11,502.57	
August .....	8,098.61	
September .....	10,944.11	
October .....	8,110.57	
November .....	8,800.62	
December .....	10,449.16	\$114,964.89

Book Balance 12/31/46 .....\$1,068.52

Book Balance 10/31/45

Exhibit #117 .....\$2,917.01)

Add Deposits Nov.....\$9,169.87

Dec..... 9,478.01 18,647.88

\$15,730.87

Deduct C.D. Nov.....\$6,988.65

Dec..... 8,581.15 15,569.80

Book Balance 12/31/45.....\$161.07\*



## Schedule 2

Day-Nite Cigar Store  
186 Club—Accts. Receivable

Book Balance 12/31/45.....\$ 3,743.55

## Add:

## Debits Per Check Disbursements Exhibit #117-A

January .....	\$ 1,519.90
February .....	1,154.99
March .....	1,172.64
April .....	3,479.69
May .....	2,466.92
June .....	
July .....	4,031.58
August .....	1,345.15
September .....	2,865.36
October .....	1,401.99
November .....	1,433.00
December .....	2,919.77

---

\$23,790.99

Rent Proration ..... 3,600.00

Utility Proration ..... 1,010.21

Office Expense Proration ..... 350.00

---

28,751.20

---

\$32,494.75

## Deduct:

## Credits Per Cash Receipts Exhibit #117-A

January .....	\$ 1,350.85
February .....	1,341.00
March .....	3,500.00
April .....	2,810.30
May .....	1,338.45
June .....	1,700.00
July .....	4,070.00
August .....	1,382.00
September .....	2,447.00
October .....	6,173.48
November .....	1,234.00
December .....	1,575.00

---

28,922.08

Book Balance 12/31/46.....\$3,572.67

[Endorsed]: Filed January 9, 1952.

# United States of America

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Assets and Liabilities	December 31, 1945	December 31, 1946
<b>Assets</b>		
Cash on Hand, Bankroll, Poker Sheets Ex. 114-114A.....	\$ 10,000.00	\$ 10,003.00
Accounts Receivable, Advances for Purchase of Equipment for Mr. Remmer's Office, 50 Mason St. ....	7,489.76	8,600.20
Lease Deposit Ex. 132A.....	4,000.00	4,000.00
Cost of Ten-Year Lease Ex. 53.....	100,000.00	100,000.00
Cost of Other Assets at Acquisition.....	\$75,000.00	
Inventory at Purchase (return) Ex. 89.....	31,198.50	
<b>Other Assets—Equipment, license, goodwill, etc. ....</b>	<b>43,801.50</b>	<b>43,801.50</b>
Inventory at Year End (return) Ex. 90.....	25,337.77	28,539.09
Improvements in 1945 Ex. 133K.....	920.00	920.00
Improvements in 1946 Ex. 134-5-6.....		2,355.16
Neon Sign 7/10/45 Ex. 132C.....	500.00	500.00
Petty Cash and Change Funds— Menlo Bar (Maudrell's Testimony).....	300.00	300.00
Tiny's Restaurant (Maudrell's Testimony).....	500.00	500.00
Deposit with P.G.&E. Ex. 132 & 133A.....	1,030.00	1,030.00
Crocker First National Bank Ex. 27.....		
Adjustment for outstanding checks and deposits in transit (Miner's Recon.).....	\$10,632.87	
	7,963.51	
<b>Adjusted Balance (\$3,571.15) .....</b>	<b>713.30</b>	<b>2,669.36</b>
Bank of America—Menlo Club Acct.—Ex. 34.....		15,265.54
<b>Total Assets .....</b>	<b>\$194,592.33</b>	<b>\$218,483.85</b>

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	December 31	
	1945	1946
<b>Liabilities</b>		
Reserve for Depreciation .....	\$ 4,277.72	\$ 8,980.71
Reserve for Amortization of Lease .....	6,666.67	16,666.67
<b>Total Liabilities</b> .....	<u>\$ 10,944.39</u>	<u>\$ 25,647.38</u>
<b>Net Worth</b> .....	<u>\$183,647.94</u>	<u>\$192,836.47</u>
<b>Capital Accounts Per Books—</b>		
Harold Maundrell .....	\$ 13,003.37	\$ 17,355.22
Thomas Turner .....	7,851.68	9,896.18
William Fricker .....	13,804.25	10,204.69
Elmer Remmer .....	43,613.50	39,508.60
Wm. E. Kyne .....	16,355.06	28,879.55
Masse Dito .....	14,583.90	10,093.33
Oscar Nelson .....	11,548.88	20,695.08
	<u>\$120,760.64</u>	<u>\$136,632.65</u>

Menlo Club			
Reserve for Depreciation			
	Cost	Rate	Depreciation Allowable 1945 1946 at 12-31-46 Accumulated
Assets acquired at purchase.....	\$43,801.50	10%	(8 mo.) \$2,920.10 \$4,380.15 \$7,300.25
Improvements—1945 .....	920.00	10%	(8 mo.) 61.33 92.00 153.33
Improvements—1946 .....	2,355.16	9 yrs.	(6 mo.) 130.84 130.84
Neon Sign—1945 .....	500.00	5 yrs.	(6 mo.) 100.00 150.00
Totals .....			\$3,031.43 \$4,702.99 \$7,734.42
Depreciation Claimed on Returns .....			\$4,277.72 \$200.00 \$4,477.02
Depreciation Allowed .....			\$4,277.72 \$4,702.99 \$8,980.71

Reserve for Amortization of Lease			
	Cost	Term	Allowance 1945 1946 at 12-31-46 Accumulated
Exhibit 53 .....	\$100,000.00	10 yrs.	(8 mo.) \$6,666.67 \$10,000.00 \$16,666.67

[Endorsed]: Filed January 9, 1952.

## PLAINTIFF'S EXHIBIT No. 168

## Day Nite Cigar Store

## Reconciliation Net Worth Per Books and Exhibit

	Books	Exhibit	Increase 12/31/43	Books and Exhibit 12/31/44 12/31/45
Cash—1943, 1944, 1945—[Figures shown were crossed out on original].				
Equipment .....	\$10,400.00	\$ 2,100.00	\$ 8,300.00	\$ 8,300.00
Inventory—1943 & 1944—Account missing. 1945 .....	22,479.12	23,694.59		(1,215.47)
Depreciation Reserve—1943 .....	208.33		(208.33)	
1944 .....	333.30	245.84		(87.46)
1945 .....	541.62	454.16		(87.46)
Unaccounted for difference in total balances .....			(1,666.27)	(108.12)
Net excess net worth per books and exhibit .....			\$ 6,410.25	\$ 6,589.32

[Endorsed]: Filed January 11, 1952.

PLAINTIFF'S EXHIBIT No. 169

B-R Smoke Shoppe

Assets and Liabilities

December 31, 1943, December 31, 1944, December 31, 1945, and December 31, 1946

Assets	December 31			
	1943	1944	1945	1946
Cash on Hand—Bankroll—Exh. 111-A .....	\$15,000.00	\$15,000.00	\$20,000.00	\$20,000.00
Pritchitt's test. ....				
Bank of America Day & Night Br.—Exh. 29 .....	913.38	324.56		
Crocker First National Bk.—Exh. 23 (B & R) .....		406.91	11.27	793.39
Crocker First National Bk.—Exh. 24 .....			833.39	
Cost of business purchased from Sherwood per testimony of Kyne .....	2,500.00	2,500.00	2,500.00	2,500.00
<b>Total Assets</b> .....	<u>\$18,413.38</u>	<u>\$18,231.47</u>	<u>\$23,344.66</u>	<u>\$23,293.39</u>
<b>Liabilities</b> .....	None	None	None	None
<b>Net Worth</b> .....	<u>\$18,413.38</u>	<u>\$18,231.47</u>	<u>\$23,344.66</u>	<u>\$23,293.39</u>

[Endorsed]: Filed January 11, 1952.

## PLAINTIFF'S EXHIBIT No. 172

E. Remmer—Account No. 10  
Personal Account With Cal-Neva Lodge, Inc.

Adjustment of Book Balances at December 31, 1943, 1944, 1945, and 1946

	December 31		
	1943	1944	1945
			1946

			\$18,148.22
--	--	--	-------------

Balances Per Books (Debits) .....

1943 1944 1945

\$10,652.77 \$17,886.66 \$25,361.68

Add (Deduct)—

(a) Credit to E. Remmer in 1943 for payment not received until 1944 .....

2,500.00

(b) Credit to E. Remmer in 1943 for payment not received until 1944 .....

2,000.00

(c) Credit to E. Remmer in 1945 for amount charged to him in error in 1944 .....

(24.98)

(d) Credit to E. Remmer on 4-30-45 for cash advanced in prior year .....

(7,500.00)

(e) Debit to E. Remmer on 4-30-45 for loans to Albert Velaudy in 1941 and 1943 .....

8,000.00

(f) Debit to E. Remmer on 4-30-46 for cash advanced to him in 1945 .....

51,086.34

(g) Credit to E. Remmer on 4-30-46 for bad checks included in cash received by him .....

(2,215.69)

	December 31		
	1943	1944	1945
(h) Debit to E. Remmer on 4-30-46 for amount charged to Bank Club in error in 1945 .....			1946
(i) Credit to E. Remmer on 4-30-47 for cash advanced by him in 1946 .....			7,000.00
(j) Debit to E. Remmer on 4-30-47 for items credited to him in error in 1946 .....			(20,000.00)
(k) Credit to E. Remmer on 4-30-47 for additional cash contributed by him in 1946 .....			97,300.00
			(34,705.83)
Balances as Corrected (Debits) .....	\$23,152.77	\$18,361.68	\$81,232.33
			\$60,742.39

## E. Remmer—Account No. 10

## Personal Account With Cal-Neva Lodge, Inc.

## Explanations of Corrections Made to Book Balances

(a) Under date of Dec. (or Feb.) 29, 1943, this account is credited with .....\$ 2,500.00  
 The cash receipts book (CR 27) shows this amount as received in February, 1944. This is in accord with a deposit on 2-23-44 to Cal-Neva's bank account of \$2,527.08 which as shown by recordak film and record of cashier's checks purchased was the total of a deposit which included cashier's check #6646918 dated 2-18-44 payable to Cal-Neva Lodge, for \$2,500.00 and purchased by Wm. E. Kyne at Bank of America, Day & Night Office (11-177).

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- (b) Under date of 4-30-43 this account is credited with the amount of ..... \$ 2,000.00  
The cash receipts book (CR 27) shows this amount as received in March, 1944, and there is a deposit of \$2,000.00 currency in the bank account on 3-30-44. No deposits were made in April, 1943.
- (c) The correcting entry made 4-30-45 (J 35) states that the amount of ..... \$ 24.98  
was charged to Remmer in error. The original charge was made 7-31-44.
- (d) Under date of 4-30-45 this account is credited with the amount of ..... \$ 7,500.00  
With the explanation: "Cash advanced by Remmer." The first deposit to Cal-Neva's bank account in 1945 was made on July 6, 1945. Therefore the cash advance referred to here must have been made in 1944.
- (e) Under date of 4-30-45 loans to Albert Vellaudy in the amount of ..... \$ 8,000.00  
Were charged to Mr. Remmer as personal loans. This indicates that these were personal loans when made in 1941 and 1943, and should be so reflected in the balances of this account prior to 1945.
- (f) Under date of 4-30-46 this account is debited in the amount of ..... \$51,086.34  
With the explanation that this amount represents cash advances to Mr. Remmer during the 1945 season. Therefore, this amount should be reflected in the balance of this account at December 31, 1945.
- (g) Under date of 4-30-46 this account is credited in the amount of ..... \$ 2,215.69  
With the explanation: "To credit E. Remmer's account for bad checks which were included in the cash received by him. Since this entry appears immediately after the one above (f) undoubtedly reference is made to the same cash received during the 1945 season. Therefore, the balance of this account at 12-31-45 should be corrected for this amount.
- (h) Under date of 4-30-46 there is a debit to this account in the amount of ..... \$ 7,000.00  
With the explanation that it is to correct for an erroneous charge to the Bank Club in 1945 (check #7163 dated 11-8-45). Since the error was made in 1945 the correction should be reflected in the 12-31-45 balance of this account.

(i) Under date of 4-30-47 this account is credited in the amount of .....\$20,000.00  
 With the explanation, "Cash advanced by Remmer." At the date of this entry Cal-Neva Lodge was  
 closed for the season. The book account showed the following deposits from 1-1-47 to 4-30-47:

January 20 .....	\$ 1.00
February 21 .....	2,000.00 currency
March 28 .....	5,000.00 Telegraphic trfr.

The telegraphic transfer is credited to Mr. Remmer's account under date of March 31, 1947. There-  
 fore the \$20,000.00 advanced must have been advanced in 1946 and should be reflected in the 12-31-  
 46 balance of this account.

(j) Under date of 4-30-47 this account is debited in the amount of .....\$97,300.00  
 With the explanation, "To correct items credited to Remmer in error." Since the original erroneous  
 credits were made in 1946 this correction should be reflected in the balance of this account at 12-31-  
 46.

(k) Under date of 4-30-47 this account is credited in the amount of .....\$34,705.83  
 With the explanation: "Additional cash contributed by Remmer to make up deficit as per Mr. J. B.  
 Jeffress' instruction." As the explanation under (i) above shows this sum could not have been re-  
 ceived in 1947. Therefore, it must have been received in 1946 and should be reflected in the balance  
 of this account at 12-31-46.

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E. Remmer—Account No. 10  
Cal-Neva, Inc.

From Exhibit #146

Total Charges and Credits by Years, 1943 to 1946, Inclusive

Date	Charges	Credits	Date	Charges	Credits
4/30/43....	\$ 12.32		4/30/45....		\$ 24.98
4/30/43....	1.46		4/30/45....		7,500.00
4/30/43....	2,500.71		4/30/45....	\$ 8,000.00	
4/30/43....	6,219.01		7/31/45....	2,000.00	
5/14/43....		\$ 5,000.00	8/31/45....	5,000.00	
6/30/43....	293.55				
7/30/43....		2,000.00	Totals .....	\$15,000.00	\$ 7,524.98
11/30/43....		8,500.00			
2/..../29....		2,500.00	4/30/46....	\$ 2,500.00	
4/30/43....		2,000.00	4/30/46....	51,086.34	
			4/30/46....		\$ 2,215.68
Totals .....	\$9,027.05	\$20,000.00	4/30/46....	7,000.00	
			6/30/46....		83,732.33
7/31/44....	\$ 24.98		9/30/46....		50,000.00
8/31/44....	750.00		10/31/46....		47,300.00
9/30/44....	1,740.91		7/31/46....	7,724.11	
11/30/44....	1,750.00		8/30/46....	7,724.11	
12/31/44....	2,968.00		9/30/46....	100,000.00	
Totals .....	\$7,233.89		Totals .....	\$176,034.56	\$183,248.02

Computation of Balances Per Books at Calendar Year Ends

Date		Charges	Credits	Debit Balance at Dec. 31
11/30/42	Balance—No further entries in 1942 .....			\$21,625.72
1943	Total of all entries (as above) .....	\$ 9,027.05	\$ 20,000.00	10,652.71
1944	Total of all entries (as above) .....	7,233.89		17,886.60
1945	Total of all entries (as above) .....	15,000.00	7,524.98	25,361.68
1946	Total of all entries (as above) .....	176,034.56	183,248.02	18,148.22

[Endorsed]: Filed January 28, 1952.

PLAINTIFF'S EXHIBIT No. 174

Elmer F. Remmer  
50 - 52 Mason Street, San Francisco

Office Improvements, Fixtures, and Equipment

Exhibit No.	Date	Payee	Testimony Page No.	Amount
132(d)	8/18/45	Fred W. Schell—Contractor—new office	1213	\$2,500.00
133(d)	10/ 4/45	Fred W. Schell—Contractor—new office	1217	1,050.00
133(e)	11/12/45	Fred W. Schell—Contractor—new office	1218-1219	2,303.00
133(f)	11/12/45	Saltzman-Stanley Co.—Furniture	1219	1,075.14
133(h)	11/20/45	John Hagen—carpenter work	1221	56.44
133(i)	11/26/45	Habenicht & Howlett—Glass	1221	22.87
133(l)	11/26/45	American District Telegraph Co.—burglar alarm.	1222-3	340.85
133(m)	11/26/45	John Hagen—carpenter work	1223	76.46
133(o)	11/28/45	John Hagen—Carpenter	1223	65.00
Total				\$7,489.76
134(d)	3/ 6/46	W. C. Finley, Jr.—furniture	1227	\$ 644.00
135(a)	3/22/46	John Hagen—Carpenter	1232	178.71
135(d)	3/31/46	United Studios—electrical work	1235	79.60
135(e)	3/31/46	Saltzman-Stanley Co.—refrigerator	1235	208.13
Total				\$1,110.44
Total paid with Menlo checks.				\$8,600.20

Checks referred to above were identified by Mr. Maundrell as being drawn on the account of "Harold H. Maundrell or Elmer Remmer" at the Crocker First National Bank. (Purpose—page 1218.)

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		Summary	
1944 Acquisitions—Safe (Exhibit 139)			\$425.00
12/31/44 Balance		\$ 425.00	
1945 Acquisitions (above)		7,489.76	
12/31/45 Balance			\$7,914.76
1946 Acquisitions			1,110.44
12/31/46 Balance			<u>\$9,025.20</u>
Reserve for Depreciation			
Date Acquired	1944	1945	Accumulated to 12/31/46
1944	Depreciation (6 mos.) \$21.25	Depreciation \$ 42.50	\$ 106.25
1945	Cost \$ 425.00		1,123.45
1946	7,489.76	(6 mos.) 374.48	55.52
	1,110.44		
		374.48	
		(6 mos.) 55.52	
		<u>\$438.23</u>	<u>\$1,285.22</u>
		\$21.25	

[Endorsed]: Filed January 28, 1952.

## PLAINTIFF'S EXHIBIT No. 175

Elmer F. Remmer

Gallagher &amp; Burton Whiskey

Equity at December 31, 1943, 1944, 1945, and 1946

	First Carload		Second Carload	
	No. of Cases	Amount	No. of Cases	Amount
Invoice Cost F.O.B. shipping point @ \$24.44 .....	1197	\$29,254.68	1194	\$29,181.36
Freight (\$1,002.09) and demurrage (\$4.53) .....		1,006.62		1,006.62
State tax @ \$1.20 a case .....		1,436.40		1,432.80
Handling charge @ \$1.20 a case .....		1,436.40		1,432.80
Drayage to Nevada Transfer & Whse. Co. ....		.....		50.00
Total cost .....	1197	\$33,134.10		\$33,103.58
Cost per case .....		\$27,680.95		\$27,724.94

	Total Amount	No. of Cases	First Carload		No. of Cases	Second Carload	
			Per Case	Amount		Per Case	Amount
November, 1943—Cost as above.....		1197	\$27.68095	\$33,134.10	1194	\$27.72494	\$33,103.58
Delivered in 1943 .....		(1050)		29,065.00			
12/31/43 On Hand .....	\$37,172.68	147	\$27.68095	\$ 4,069.10	1194	\$27.72494	\$33,103.58
1944—Floor stock tax .....		147	6.24700	918.31	1194	6.26400	7,479.22
Delivered in 1944 .....		147	\$33.92795	\$ 4,987.41	1194	\$33.98894	\$40,582.80
					(200)		(6,797.79)
12/31/44 On Hand .....	\$38,772.42	147	\$33.92795	\$ 4,987.41	994	\$33.98894	\$33,785.01
Delivered in 1945 .....		(147)		(4,987.41)	(194)		(6,593.86)
12/31/45 On Hand .....	\$27,191.15				800	\$33.98894	\$27,191.15
Received in 1946 .....					100		3,398.89
Transferred in 1946 .....					(900)		(30,590.04)
12/31/46 On Hand .....							

Summary	1943	1944	1945	1946
Cost of liquor owned at December 31.....	\$37,172.68	\$38,772.42	\$27,191.15	.....
Less—Amount owed to Sierra Wine & Liquor Co. on deal.....	3,978.26	4,896.57	.....	.....
Mr. Remmer's Equity at December 31.....	\$33,194.42	\$33,875.85	\$27,191.15	

Above figures based on testimony of Messrs. Barengo and Stewart.

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## PLAINTIFF'S EXHIBIT No. 175

Elmer F. Remmer  
Gallagher & Burton Whiskey

Quantities Owned at December 31, 1943, 1944, 1945, and 1946

Date	First Carload	No. of Cases
11/14/43	First carload received by Sierra Wine & Liquor Co. ....	1200
	Broken in transit .....	(3)
11/15/43	Delivered to Palace Club .....	(500)
11/16/43	Delivered to Club 222 .....	(50)
11/16/43	Delivered to Bank Club .....	(300)
11/16/43	Delivered to Silver Dollar Bar .....	(100)
11/1/43	Delivered to Silver Dollar Bar .....	(100)
12/31/43	Balance .....	147
12/31/44	Balance .....	147
12/31/45	Balance .....	none
12/31/46	Balance .....	none

Above based on testimony of Mr. Barengo. He stated that 147 cases were held as security for payment of taxes, commission, etc., of \$4,896.57 until Aug. 9, 1945. Upon payment on that date 147 cases were delivered to Bank Club.

Date	Second Carload	No. of Cases
12/30/43	Testimony of Messrs. Barengo and Stewart that balance of 1200 cases (less 6 broken in transit) placed in storage at Nevada Transfer & Warehouse Co. ....	1194
12/31/43	On Hand .....	1194
6/30/44	Delivered to Cal-Neva Truck .....	(100)
7/12/44	Delivered to Cal-Neva Truck .....	(100)
12/31/44	On Hand .....	994
9/10/45	Delivered to Cal-Neva Truck .....	(194)
12/31/45	On Hand .....	800
5/ 9/46	Received from Cal-Neva Truck .....	100
5/ 9/46	Transferred to Bank Club .....	(900)
12/31/46	On Hand .....	none

Above based on testimony of Messrs. Barengo and Stewart.

[Endorsed]: Filed January 28, 1952.

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## PLAINTIFF'S EXHIBIT No. 183

Elmer F. Remmer and Helen L. Remmer  
Reno, Nevada

		Recomputation of Net Income Based on Net Worth Increases Plus Non-Deductible Expenses			
		1943	1944	1945	1946
<b>Assets</b>					
1.	U. S. Government Bonds .....	\$ 5,062.50	\$ 10,481.25	\$ 17,081.25	\$ 17,081.25
2.	B-R. Smoke Shoppe, S.F. ....	18,413.38	18,231.47	23,344.66	23,293.39
3.	186 Club Corp'n, S.F. ....		39,494.37	30,390.47	28,643.47
4.	Day-Nite Cigar Store, S.F. ....		32,674.91	44,321.40	33,210.35
5.	One Ten Eddy St., S.F. ....			183,647.94	192,836.47
6.	Menlo Club, S.F. ....				32,641.46
7.	Transit Smoke Shop, S.F. ....				65,000.00
8.	Cash on hand .....				466,666.66
9.	The Cal-Neva Inc. ....				2,400.00
10.	Mountain City Consolidated Copper Co. ....	33,194.42	33,875.85	27,191.15	
11.	Gallagher & Burton Whiskey .....			12,000.00	4,000.00
12.	Loan to Brice & Silverman .....			1,250.00	250.00
13.	Loan to Hazel Harris .....			19,166.19	19,166.19
14.	Moraga Estates Prop. ....	19,166.19	19,166.19	37,296.25	37,296.25
15.	Richmond Annex Prop. ....	25,154.90	25,154.90		
16.	Loan to P. R. Badovinatz ? .....				
17.	Bank of America—Tracy Br. Bk. of Amer. ....	366.90	1,576.90	1,966.15	1,403.69
18.	21 Club, El Cerrito .....	7,676.53	13,004.93	10,417.97	11,513.85
19.	San Diego Social Club, El Cerrito .....	3,404.76	3,598.88	7,436.96	6,619.38
20.	Bank of Amer.—Grand Lake Br.—Helen L. Remmer .....			485.90	439.75
21.	Moraga Highlands .....			10,000.00	20,119.00
22.	50 - 52 Mason St. Office .....			7,489.76	8,600.20
	Safe .....		425.00	425.00	425.00

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23. Due from Bank Club for 900 cs. of G&B Whiskey.....					29,979.00
24. Loan to Albert Vellaudy .....				3,400.00	3,400.00
25. Cash in Safe Deposit Boxes .....				?	?
Total Assets .....	\$170,789.89	\$210,408.26	\$437,311.05	\$1,004,985.36	
Liabilities					
26. Due to Menlo Club for 50 - 52 Mason St. Office .....					
27. Due to Cal-Neva Inc. ....				\$ 7,489.76	\$ 8,600.20
28. Notes Payable—Bk. of Amer. on Moraga Estates Prop..	23,152.77	18,361.68	81,232.33	60,742.39	
29. Due to Graham & McKay on Purchase of Cal-Neva .....	4,000.00	3,000.00			
30. Due to Ogden F. Monahan .....	1,800.00	1,800.00		366,666.66	
31. Due to William Graham .....					
32. Reserve for Depreciation of Office Equip & Safe .....		21.25	438.23	10,000.00	10,000.00
33. Due to Gene Schriber on Menlo Lease .....			100,000.00	1,285.22	75,000.00
Total Liabilities .....	\$ 28,952.77	\$ 23,182.93	\$189,160.32	\$522,294.47	
Net Worth .....	\$141,837.12	\$187,225.33	\$248,150.73	\$482,690.89	
Increase in net worth .....					
Plus: Federal income taxes paid .....		\$ 45,388.21	\$ 60,925.40	\$234,540.16	
Living expenses .....		5,359.70	10,140.00	19,745.26	?
Total income .....					
Income reported .....		\$ 50,747.91	\$ 71,065.40	\$254,285.42	
Difference .....		19,000.00	59,318.36	22,489.58	
		\$ 31,747.91	\$ 11,747.04	\$231,795.84	

[Endorsed]: Filed February 4, 1952.

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## DEFENDANT'S EXHIBIT A-1

Property Management  
50 Mason Street  
San Francisco, California

## Promissory Note

September 27th, 1946.

For Value Received, I promise to pay to Robert L. Jeffres, or to his order, the sum of Fifty Thousand Dollars (\$50,000.00), with interest thereon at the rate of Six Percent (6%) per annum until paid.

Witness my hand and seal, the day and year above first written.

/s/ ELMER F. REMMER.

[Endorsed]: Filed December 28, 1951.

## DEFENDANT'S EXHIBIT D-1 (For Identification)

Know All Men by These Presents:

That I, Elmer Remmer, of Reno, Nevada, for valuable consideration, the receipt whereof is hereby acknowledged, do sell, assign and transfer unto J. B. Scarlett, sometimes known as "Jack Sullivan," the sum of Twenty-Five Thousand Dollars (\$25,000.00) lawful money of the United States from such funds as may be held for my credit by the Trust Department of the First National Bank of Nevada, at Reno, Nevada, under the terms of an agreement between Elmer Remmer of Reno, Nevada, therein referred to as "Seller" and Cal-Neva Lodge, Inc., therein referred to as "Buyer," said agreement being dated the 10th day of June, 1948. The said First National Bank of Nevada is instructed, authorized and directed from such monies as may be due me under the terms of the said agreement to first pay and deliver to the said J. B. Scarlett the sum of Twenty-Five Thousand Dollars (\$25,000.00) in cash upon the said J. B. Scarlett delivering to you a certain check given him by me drawn upon the First National Bank of Nevada and dated October 24, 1948, payable to Jack Sullivan in the sum of Twenty-Five Thousand Dollars (\$25,000.00) and signed by Elmer Remmer.

/s/ ELMER REMMER.

Dated: October 21, 1948.

[Endorsed]: Filed February 6, 1952.

## DEFENDANT'S EXHIBIT E (For Identification)

## Amended Return

Page 1

File this return with Collector of Internal Revenue on or before March 15, 1945. Any balance of tax due (item 8, below) must be paid in full with return. See separate Instructions for filling out return.

Form 1040—Treasury Dept., Internal Revenue Service. 1944

U. S. Individual Income Tax Return

For Calendar Year 1944

or fiscal year beginning ....., 1944, and ending ....., 1945

Name Helen L. Remmer.

Address Cal-Neva, Lake Tahoe, Nevada.

## Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, Before Pay-Roll Deductions for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

Filed on \$10,000 Each 1944.

Amended \$3,000 additional 1944 Each.

B&L Smoke Shop, 50 Mason, San Francisco.

## Tax Due or Refund

6. Enter your tax from table on page 2, or from line 15, page 4 .....\$3,760.00

7. How much have you paid on your 1944 income tax?

(B) By payments on 1944 Declaration of Estimated Tax. Paid on original taxpayers figures.....

Enter total here 2,570.00

8. If your tax (item 6) is larger than payments (item

7) enter Balance of Tax Due here.....\$1,190.00

9. If your payments (item 7) are larger than your tax

(item 6), enter the Overpayment here.....Int. 166.60

\$1,356.60

If you filed a return for a prior year, what was the latest year? 1943.

To which Collector's office was it sent? Reno.

To which Collector's office did you pay amount claimed in item 7 (B), above? Reno.

Is your wife (or husband) making a separate return for 1944? Yes.

If "Yes," write below:

Name of wife (or husband) Elmer F. Remmer.

Collector's office to which sent Reno.

## DEFENDANT'S EXHIBIT A-1

Property Management  
50 Mason Street  
San Francisco, California

## Promissory Note

September 27th, 1946.

For Value Received, I promise to pay to Robert L. Jeffres, or to his order, the sum of Fifty Thousand Dollars (\$50,000.00), with interest thereon at the rate of Six Percent (6%) per annum until paid.

Witness my hand and seal, the day and year above first written.

/s/ ELMER F. REMMER.

[Endorsed]: Filed December 28, 1951.

## DEFENDANT'S EXHIBIT D-1 (For Identification)

Know All Men by These Presents:

That I, Elmer Remmer, of Reno, Nevada, for valuable consideration, the receipt whereof is hereby acknowledged, do sell, assign and transfer unto J. B. Scarlett, sometimes known as "Jack Sullivan," the sum of Twenty-Five Thousand Dollars (\$25,000.00) lawful money of the United States from such funds as may be held for my credit by the Trust Department of the First National Bank of Nevada, at Reno, Nevada, under the terms of an agreement between Elmer Remmer of Reno, Nevada, therein referred to as "Seller" and Cal-Neva Lodge, Inc., therein referred to as "Buyer," said agreement being dated the 10th day of June, 1948. The said First National Bank of Nevada is instructed, authorized and directed from such monies as may be due me under the terms of the said agreement to first pay and deliver to the said J. B. Scarlett the sum of Twenty-Five Thousand Dollars (\$25,000.00) in cash upon the said J. B. Scarlett delivering to you a certain check given him by me drawn upon the First National Bank of Nevada and dated October 24, 1948, payable to Jack Sullivan in the sum of Twenty-Five Thousand Dollars (\$25,000.00) and signed by Elmer Remmer.

/s/ ELMER REMMER.

Dated: October 21, 1948.

[Endorsed]: Filed February 6, 1952.

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DEFENDANT'S EXHIBIT E (For Identification)

Amended Return

Page 1

File this return with Collector of Internal Revenue on or before March 15, 1945. Any balance of tax due (item 8, below) must be paid in full with return. See separate Instructions for filling out return.

Form 1040—Treasury Dept., Internal Revenue Service. 1944

U. S. Individual Income Tax Return

For Calendar Year 1944

or fiscal year beginning ....., 1944, and ending ....., 1945

Name Helen L. Remmer.

Address Cal-Neva, Lake Tahoe, Nevada.

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, Before Pay-Roll Deductions for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

Filed on \$10,000 Each 1944.

Amended \$3,000 additional 1944 Each.

B&L Smoke Shop, 50 Mason, San Francisco.

Tax Due or Refund

6. Enter your tax from table on page 2, or from line 15, page 4 .....\$3,760.00
7. How much have you paid on your 1944 income tax?  
(B) By payments on 1944 Declaration of Estimated Tax. Paid on original taxpayers figures.....Enter total here 2,570.00
8. If your tax (item 6) is larger than payments (item 7) enter Balance of Tax Due here.....\$1,190.00
9. If your payments (item 7) are larger than your tax (item 6), enter the Overpayment here.....Int. 166.60

\$1,356.60

If you filed a return for a prior year, what was the latest year? 1943.

To which Collector's office was it sent? Reno.

To which Collector's office did you pay amount claimed in item 7 (B), above? Reno.

Is your wife (or husband) making a separate return for 1944? Yes.

If "Yes," write below:

Name of wife (or husband) Elmer F. Remmer.

Collector's office to which sent Reno.

**Tax Computation—For Persons Not Using Tax Table on Page 2**

1. Enter amount shown in item 5, page 1. This is your  
Adjusted Gross Income .....\$13,000
2. Enter Deductions (if deductions are itemized above,  
enter the total of such deductions; if adjusted gross  
income (line 1, above) is \$5,000 or more and deduc-  
tions are not itemized, enter the standard deduction  
of \$500) ..... 500
3. Subtract line 2 from line 1. Enter the difference  
here. This is your Net Income.....\$12,500
4. Enter your Surtax Exemptions (\$500 for each per-  
son listed in item 1, page 1)..... 500
5. Subtract line 4 from line 3. Enter the difference  
here. This is your Surtax Net Income.....\$12,000
6. Use the Surtax Table in instruction sheet to figure  
your Surtax on amount entered on line 5. Enter the  
amount here .....\$ 3,400
7. Copy the figure you entered on line 3, above. (If line  
3 includes partially tax-exempt interest, see Tax  
Computation Instructions) .....\$12,500
8. Enter your Normal-Tax Exemption (\$500 if return  
includes income of only one person; otherwise see  
Tax Computation Instructions) ..... 500
9. Subtract line 8 from line 7, and enter the difference  
here .....\$12,000
10. Enter here 3 percent of line 9. This is your Normal  
Tax .....\$ 360
11. Add the figures on lines 6 and 10, and enter the total  
here. (If alternative tax computation is made on  
separate Schedule D, enter here tax from line 15 of  
Schedule D) .....\$ 3,760
15. Subtract line 14 from line 11. Enter the difference  
here and in item 6, page 1. This is your tax.....\$ 3,760

[Endorsed]: Filed December 6, 1951.

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DEFENDANT'S EXHIBIT E-1 (For Identification)

Final Escrow Receipt and Release  
Reno, Nevada, March 2, 1949

Escrow No. 1541

(Names of parties to escrow) Cal Neva - Adler.

The undersigned hereby acknowledge receipt of the following:

- (1) Cashier's check No. 17849 in the sum of \$25,000.00, payable to the order of J. B. Scarlett.

in full settlement of all moneys and/or documents due them under the above-entitled escrow, and declare the purposes of this escrow completely fulfilled, acknowledging that all of their rights, interest and equities arising out of said escrow, or otherwise, have been fully observed by the First National Bank of Nevada, Reno, Nevada.

Main Branch, Reno, Nevada.

The undersigned hereby release the said First National Bank of Nevada, Reno, Nevada, from all liability and responsibility thereunder.

/s/ J. B. SCARLETT.

[Endorsed]: Filed February 6, 1952.

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DEFENDANT'S EXHIBIT F

May 23, 1945.

Mr. G. E. Simmons  
313 San Pablo Avenue  
El Cerrito, California

Dear Mr. Simmons:

Will you please let me know the amount of the distributive share of Mr. E. F. Remmer's partnership return for the 21 Club in El Cerrito for the year 1944. We have to have these figures as I may have to file an amended Income Tax Form 1040.

Thanking you for your prompt attention in this matter. I might add that I was in your office about a year ago with Mr. Willie Kyne. With the writer's kindest personal regards.

Sincerely yours,

PAT MOONEY,  
Chief Field Deputy.

PM:ke

[Endorsed]: Filed December 6, 1951.



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DEFENDANT'S EXHIBIT #1 (for identification)  
[Endorsed]: Filed February 6, 1962.

THE NATIONAL BANK OF NEVADA  
100 N. 3rd St. Las Vegas, NV  
94CC 2-1 1961

*J. J. Smith*

94CC	2-1 1961
MADE IN U.S.A.	

PAPER	
FIRST NATIONAL BANK OF NEVADA	
SAN PEECE 941	
NO 17849	
MARCH 1945	
19	
\$ 25,000.00	
DOLLARS	
<i>Robert</i>	
YOUR PRESIDENT - FIRST TRUST OFFICE	

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POOR COPY

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*United States of America*

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DEFENDANT'S EXHIBIT G

C.F.D.

May 10, 1946.

Mr. G. E. Simmons  
Public Accountant  
313 San Pablo Ave.  
El Cerrito, California

Dear Mr. Simmons:

I was unable to contact Mr. Lewis, 333 Montgomery St., San Francisco, regarding the partnership returns of Elmer F. Remmer for the 21 Club in El Cerrito.

You may have the returns in your possession at this time and no doubt you can give me the distributive share of Mr. Remmer's net income. It is necessary for me to have these figures in order to complete Mr. Remmer's return.

Thanking you for your courtesy in this matter,

Very truly yours,

.....  
Chief Field Deputy.

PM/m

[Endorsed]: Filed December 6, 1951.

DEFENDANT'S EXHIBIT G-1

April 8, 1948.

We have examined Mr. Remmer's income tax returns for the years 1943 through 1946 and we have talked with Mr. Remmer at some length and also with his accountant, Mr. Maundrell.

After such examination and discussion we are of the opinion that Mr. Remmer has made an honest return of all taxable income for the years 1942 through 1947. We have been informed by the agents of the Bureau of Internal Revenue that there were no specific charges against Mr. Remmer as to any acts of income tax avoidance or evasion and the agents refuse to state in what particulars, if any, that Mr. Remmer had failed to make a return of taxable income.

Under these circumstances, we do not feel that Mr. Remmer should make any statement to agents of the Bureau or submit to questioning by such agents as to any matters pertaining to his returns for the years 1942 through 1947. At such time as the Bureau, or its agents, in the course of their investigation are ready to state that Mr. Remmer has not returned certain income as taxable, then Mr. Remmer will make a full statement to meet any such charge or charges.

[Endorsed]: Filed February 7, 1952.

## DEFENDANT'S EXHIBIT H

March 7, 1947.

Willie Kyne  
50 Mason St.  
San Francisco, California

Re: Elmer F. Remmer

Dear Willie:

With Herb Caen's permission we are enclosing Income Tax Extension blanks for Mr. Remmer and Helen L. Remmer for both their signatures.

While we are discussing taxes find out the exact cost to Bones of the Menlo Club. As he may take part of his cost over the period of his lease. In other words, to recover his Capital Investment. Then we will file an amended return for the eight months he owned the club in 1945. We may be able to save him quite a little money over the taxable years. On the other hand, he may have deducted this. Item on the partnership return filed for year 1945. You may make the statement that your books are not fully made up for the year 1946 as a reason for the extension.

With kindest regards to Bones and yourself.

Sincerely,

PAT MOONEY.

[Endorsed]: Filed December 6, 1951.

## DEFENDANT'S EXHIBIT I (For Identification)

## Amortization of Purchase Price Item 22:

Elmer F. Remmer purchased the Menlo Club San Francisco, on May 1, 1945, for the sum of \$175,000.00; which included merchandise on hand \$31,198.50; which after deducting the last mentioned amount leaves a capital investment of \$143,801.50 spread over a five year lease period; Amortization, year 1946, \$28,760.15.

## Item 24:

Laundry .....	\$ 997.62
General Miscellaneous Expenses .....	85.30
Bank Charges and Returned Checks .....	2,960.43
Garbage Collection .....	80.00
Supplies, Janitor and Miscellaneous .....	745.31
Light and Power .....	1,115.46
Telephone and Telegraph .....	285.48
Playing Cards .....	12,332.34
Poker Chips .....	1,000.00
Stationery and Printing .....	151.45
Water .....	139.51

Total Item 24.....\$19,892.90

[Endorsed]: Filed December 6, 1951.

DEFENDANT'S EXHIBIT L-1 (For Identification)

Form 872—Treasury Dept., Int. Rev. Serv. Original  
Consent Fixing Period of Limitation Upon Assessment of  
Income and Profits Tax

May 4, 1950.

In pursuance of the provisions of existing Internal Revenue Laws One Eighty Six Club, c/o Elmer F. Remmer, a taxpayer (or taxpayers) of 50 Mason Street, San Francisco, California, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended June 30, 1943, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1951, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

.....  
Taxpayer.<sup>1</sup>

.....  
Taxpayer.<sup>1</sup>

[Seal]<sup>2</sup>

By.....

.....  
Commissioner of Internal Revenue.

By.....

(Date)

<sup>1</sup> This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return of a Husband and Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

<sup>2</sup> If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

O'CONNELL.

[Endorsed]: Filed December 7, 1951.

## DEFENDANT'S EXHIBIT L-2 (For Identification)

Form 872—Treasury Dept., Int. Rev. Serv.

Original

Consent Fixing Period of Limitation Upon Assessment of  
Income and Profits Tax

May 4, 1950.

In pursuance of the provisions of existing Internal Revenue Laws One Eighty Six Club, c/o Elmer F. Remmer, a taxpayer (or taxpayers) of 50 Mason Street, San Francisco, California, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended June 30, 1944, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1951, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

\_\_\_\_\_  
Taxpayer.<sup>1</sup>\_\_\_\_\_  
Taxpayer.<sup>1</sup>[Seal]<sup>2</sup>

By\_\_\_\_\_

\_\_\_\_\_  
Commissioner of Internal Revenue.

By\_\_\_\_\_

(Date)

<sup>1</sup> This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return of a Husband and Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

<sup>2</sup> If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

O'CONNELL.

[Endorsed]: Filed December 7, 1951.

DEFENDANT'S EXHIBIT L-3 (For Identification)

Form 872—Treasury Dept., Int. Rev. Serv.

Original

Consent Fixing Period of Limitation Upon Assessment of  
Income and Profits Tax

May 4, 1950.

In pursuance of the provisions of existing Internal Revenue Laws One Eighty Six Club, c/o Elmer F. Remmer, a taxpayer (or taxpayers) of 50 Mason Street, San Francisco, California, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended June 30, 1945, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1951, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

\_\_\_\_\_  
Taxpayer.<sup>1</sup>

\_\_\_\_\_  
Taxpayer.<sup>1</sup>

[Seal]<sup>2</sup>

By\_\_\_\_\_

\_\_\_\_\_  
Commissioner of Internal Revenue.

By\_\_\_\_\_

(Date)

<sup>1</sup> This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return of a Husband and Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

<sup>2</sup> If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

O'CONNELL.

[Endorsed]: Filed December 7, 1951.



## DEFENDANT'S EXHIBIT L-4 (For Identification)

Form 872—Treasury Dept., Int. Rev. Serv.

Original

Consent Fixing Period of Limitation Upon Assessment of  
Income and Profits Tax

May 4, 1950.

In pursuance of the provisions of existing Internal Revenue Laws One, Eighty Six Club, c/o Elmer F. Remmer, a taxpayer (or taxpayers) of 50 Mason Street, San Francisco, California, and the Commissioner of Internal Revenue hereby consent and agree as follows:

That the amount of any income, excess-profits, or war-profits taxes due under any return (or returns) made by or on behalf of the above-named taxpayer (or taxpayers) for the taxable year ended June 30, 1946, under existing acts, or under prior revenue acts, may be assessed at any time on or before June 30, 1951, except that, if a notice of a deficiency in tax is sent to said taxpayer (or taxpayers) by registered mail on or before said date, then the time for making any assessment as aforesaid shall be extended beyond the said date by the number of days during which the Commissioner is prohibited from making an assessment and for sixty days thereafter.

Taxpayer.<sup>1</sup>Taxpayer.<sup>1</sup>[Seal]<sup>2</sup>

By \_\_\_\_\_

Commissioner of Internal Revenue.

By \_\_\_\_\_

(Date)

<sup>1</sup> This consent may be executed by the taxpayer's attorney or agent, provided such action is specifically authorized by a power of attorney, which, if not previously filed, must accompany the consent.

If executed with respect to a year for which a Joint Return of a Husband and Wife was filed, this consent must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

<sup>2</sup> If this consent is executed on behalf of a corporation, it shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which the seal of the corporation must be affixed. Where the corporation has no seal, the consent must be accompanied by a certified copy of the resolution passed by the board of directors, giving the officer authority to sign the consent.

O'CONNELL.

[Endorsed]: Filed December 7, 1951.

# DEFENDANT'S EXHIBIT M-1

Accounting Statements, Prepared by Lawrence J. Semenza

Elmer F. and Helen Remmer

Comparison of Gross Income Reported in Individual Income Tax Returns With Income From Various Enterprises as Shown by Analysis of Books, Records, and Other Evidence Introduced in Case of U. S. vs. Remmer For Years 1944, 1945, and 1946

United States of America

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Source of Income	1944	1945	1946	Total
B-R Smoke Shop .....	\$ 5,917.43	.....	(\$1,329.68)	\$ 4,587.75
Day-Night Cigar Store.....	1,092.51	\$ 1,303.77	803.47	3,199.75
110 Eddy Street .....	3,170.29	5,532.50	(827.31)	7,875.48
Menlo Club .....	.....	40,254.90	36,876.36	77,131.26
Transit Smoke Shop .....	.....	.....	1,046.01	1,046.01
21 Club and San Diego Social Club .....	(184.34)	25,932.73	(3,353.09)	22,395.30
311 Club .....	1,257.18	584.92	.....	1,842.10
186 Club (salary) .....	.....	1,350.00	.....	1,350.00
Net gambling gains .....	.....	.....	5,000.00	5,000.00
Total .....	11,253.07	74,958.82	38,215.76	124,427.65
Gross income included in individual income tax returns...	20,000.00	71,808.27*	37,254.31	129,062.58
(Understatement) or overstatement .....	\$8,746.93	(\$3,150.55)	(\$961.45)	\$4,634.93

\* Includes commissions paid to employees in the total amount of \$5,948.91, as shown in income tax return filed.

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Elmer F. and Helen Remmer  
List of Assets and Liabilities, to the Extent Shown by Evidence in U. S. vs. Remmer, at  
December 31, 1943, 1944, 1945, and 1946

Item	Assets	12/31/1943	12/31/1944	12/31/1945	12/31/1946
1.	Bank of America, Tracy Branch.....	\$ 366.90	\$ 1,576.90	\$ 1,966.15	\$ 1,403.69
2.	Bank of America, Grand Lake Branch, Oakland, Calif. ....			485.90	439.75
3.	United States Government Bonds .....	5,062.50	10,481.25	17,081.25	17,081.25
4.	Due from Hazel Harris .....			1,250.00	250.00
5.	Due from Mayris Chaney .....	2,500.00			
6.	Due from Albert Villaudy .....	8,000.00	5,400.00	3,400.00	3,400.00
7.	Equity in B-R Smoke Shop .....	1,706.69	1,817.61	4,165.71	1,216.58
8.	Equity in Day-Nite Cigar Store .....	13,661.68	27,949.53	30,310.27	31,113.74
9.	Equity in 110 Eddy Street .....	28,956.18	35,765.14	25,647.64	24,820.33
10.	Equity in Menlo Club .....			95,127.59	113,433.39
11.	Equity in Transit Smoke Shop .....	11,081.29	16,603.81	17,854.93	15,966.57
12.	Equity in 21 Club and San Diego Social Club.....				18,133.23
13.	Cal-Neva, Inc., capital stock .....				466,666.66
14.	Mountain City Consolidated Copper Co., stock .....				2,400.00
15.	Gallagher and Burton whiskey .....	33,194.42	26,728.63	22,179.95	24,952.44
16.	Moraga Estates property .....	19,166.19	19,166.19	19,166.19	19,166.19
17.	Richmond Annex property .....	25,154.90	25,154.90	37,296.25	37,296.25
18.	Moraga Highlands property .....		468.40	10,000.00	20,119.00
19.	Autos .....			468.40	2,185.31
20.	Cash in safe deposit boxes and safes.....				
	Total assets .....	\$148,850.75	\$171,112.36	\$286,400.23	\$800,044.38
		Plus cash	Plus cash	Plus cash	Plus cash

# United States of America

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Item	Liabilities				
21. Due to Cal-Neva, Inc. ....	.....	23,152.77	18,361.68	83,732.33	60,742.39
22. Notes payable to Bank of America on Moraga Estates .....	.....	4,000.00	3,000.00	.....	.....
23. Due to Graham and McKay on purchase of Cal-Neva, Inc., stock .....	.....	.....	.....	.....	366,666.66
24. Due to Ogden F. Monahan .....	.....	1,800.00	1,800.00	.....	.....
25. Due to William J. Graham .....	.....	.....	.....	.....	10,000.00
26. Due to R. L. Jeffress .....	.....	.....	.....	.....	50,000.00
27. Due to Gene Schriber .....	.....	.....	.....	125,000.00	75,000.00
28. Due to Wm. Remmer .....	.....	358.15	1,028.06	1,084.49	9,592.88
29. J. B. Scarlett .....	.....	.....	.....	.....	9•
Total liabilities .....	.....	29,310.92	24,189.74	209,816.82	•572,001.93
Net worth .....	.....	\$119,539.83	\$146,922.62	\$ 76,583.41	\$228,042.45
	.....	Plus cash	Plus cash	Plus cash	Plus cash

•Liabilities would be increased and net worth decreased by any liability determined to be due Mr. Scarlett at December 31, 1946.

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Elmer and Helen Remmer Changes in Net Worth, 1944 to 1946, Inclusive					Schedule No. 1	
	1944	1945	1946	Three Years Combined		
End of period .....	\$146,922.62	\$ 76,583.41	\$228,042.45	\$228,042.45		
	Plus cash .....	Plus cash .....	Plus cash .....	Plus cash .....		
Beginning of period .....	119,539.83	146,922.62	76,583.41	119,539.83		
	Plus cash .....	Plus cash .....	Plus cash .....	Plus cash .....		
Increase or (decrease) .....	\$ 27,382.79	(\$70,339.21)	\$151,459.04	\$108,502.62		
	Plus or min's .....	Plus or min's .....	Plus or min's .....	Plus or min's .....		
	ch'ge in cash .....	ch'ge in cash .....	ch'ge in cash .....	ch'ge in cash .....		
<b>B-R Smoke Shop</b>						
<b>Assets, Liabilities, and Net Worth December 31, 1943, 1944, 1945, and 1946</b>						
<b>Assets</b>						
Cash on hand—bankroll- (Pritchett's testimony) .....	12/31/1943	12/31/1944	12/31/1945	12/31/1946		
Markers in bankroll* .....	.....	.....	\$ 5,000.00	.....		
Bank of America, Day & Night Branch (Ex. 29) .....	\$ 913.38	\$ 324.56	.....	.....		
Crocker First National Bank (Ex. 23) .....	.....	406.91	11.27	.....		
Crocker First National Bank (Ex. 24) .....	.....	.....	833.39	\$ 793.39		
Cost of business purchased from Sherwood, per testimony of Kyne .....	2,500.00	2,500.00	2,500.00	2,500.00		
Safe (Ex. 139) .....	.....	425.00	425.00	425.00		
Office improvements, fixtures, and equipment .....	.....	.....	7,489.76	8,600.20		
(Maundrell's testimony) .....	.....	.....	.....	.....		
	\$3,413.38	\$3,656.47	\$16,259.42	\$12,318.59		

Liabilities

Due Menlo Club .....		\$ 7,489.76	\$ 8,600.20
Depreciation reserve (Ex. 174) .....	\$ 21.25	438.23	1,285.22
Net worth .....	\$ 21.25	\$ 7,927.99	\$ 9,885.42
	3,635.22	8,331.43	2,433.17
	\$3,413.38		
	\$3,413.38	\$16,259.42	\$12,318.59

\*According to testimony of Pritchett, there were \$15,000.00 of markers in bankroll at December 31, 1945. On a cash basis, if the markers represented unpaid bets, they would not be considered an asset at December 31, 1945. On an accrual basis, the markers would be considered an asset as long as they were collectible.

Partners' Capital Accounts

Remmer .....	\$1,706.69	\$1,817.61	\$4,165.71	\$1,216.58
Kyne .....	853.34	908.81	2,082.86	608.29
Lando .....	853.35	908.80	2,082.86	608.30
	\$3,413.38	\$3,635.22	\$8,331.43	\$2,433.17

Schedule No. 2

## Day-Nite Cigar Store

Balance Sheet and Partners' Capital Accounts  
December 31, 1943, 1944, 1945, and 1946

## Balance Sheet

	12/31/1943	12/31/1944	12/31/1945	12/31/1946
<b>Assets</b>				
Bank of America .....	(\$ 973.87)	\$ 2,383.26	\$ 161.07	\$ 1,069.51
Cash on hand .....	.....	965.25	.....	.....
Cash change fund .....	.....	200.00	200.00	202.20
Prepaid insurance .....	226.70	165.70	434.00	.....
Prepaid licenses and taxes .....	234.10	191.00	49.00	.....
Deposits .....	104.50	104.50	104.50	104.50
Inventory .....	11,889.00	24,747.27	23,694.59	22,466.44
Accounts receivable				
186 Club .....	.....	.....	3,588.95	3,418.07
50 Mason Street .....	.....	.....	616.44	620.16
Equipment .....	10,400.00	10,400.00	10,400.00	10,400.00
	21,880.43	39,156.98	39,248.55	38,280.88

Liabilities

Accrued sales tax .....	111.97	282.36	218.80	.....
Accrued payroll tax .....	417.58	310.45	504.68	.....
Accrued miscellaneous expense .....	.....	62.00	.....	.....
Sales tax collected .....	254.06	.....	.....	751.62
Reserve for depreciation .....	208.33	333.30	541.62	(123.70)
Due—110 Eddy Street .....	.....	.....	.....	880.67
	991.94	988.11	1,265.10	1,508.59
	\$20,888.49	\$38,168.87	\$37,983.45	\$36,772.29
Net worth .....				

Partners' Capital Accounts

Wm. E. Kyne .....	\$ 2,835.27	\$ 3,927.78	\$ 2,981.55	\$ 222.52
Sylvan Lando .....	2,835.27	3,927.78	5,231.55	6,035.02
Elmer F. Remmer .....	13,661.68	27,949.53	30,310.27	31,113.74
	\$19,332.22	\$35,805.09	\$38,523.37	\$37,371.28



## Day-Nite Cigar Store

Balance Sheet and Partners' Capital Accounts  
December 31, 1943, 1944, 1945, and 1946

## Partners' Capital Accounts

	Wm. E. Kyne	Sylvan Lando	Elmer Remmer*	Total
Balance, December 31, 1943 .....			\$15,705.00	\$15,705.00
Distribution of 1943 profit .....	\$2,835.27	\$2,835.27	2,835.26	8,505.80
	2,835.27	2,835.27	18,540.26	24,210.80
Less: Drawings—1943 .....			4,878.58	4,878.58
Balance after adjustments, December 31, 1943.....	2,835.27	2,835.27	13,661.68	19,332.22
Net capital contributions—1944 .....			20,097.71	20,097.71
Distribution of 1944 profit .....	1,092.51	1,092.51	1,092.51	3,277.53
	3,927.78	3,927.78	34,851.90	42,707.46
Less: Drawings—1944 .....			6,902.37	6,902.37
Balance, December 31, 1944 .....	3,927.78	3,927.78	27,949.53	35,805.09
Net capital contributions—1945 .....			3,960.29	3,960.29
Distribution of 1945 profit .....	1,303.77	1,303.77	1,303.77	3,911.31
	5,231.55	5,231.55	33,213.59	43,676.69
Less: Drawings—1945 .....	2,250.00		2,903.32	5,153.32
Balance, December 31, 1945 .....	2,981.55	5,231.55	30,310.27	38,523.37
Distribution of 1946 profit .....	803.47	803.47	803.47	2,410.41
	3,785.02	6,035.02	31,113.74	40,933.78
Less: Drawings—1946 .....	3,562.50			3,562.50
Balance, December 31, 1946 .....	\$ 222.52	\$6,035.02	\$31,113.74	\$37,371.28

\*In view of Kyne's testimony that Remmer provided the capital, the Wm. E. Kyne investment account has been included in the Remmer capital account.

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## Day-Nite Cigar Store

Statement of Income and Expense for  
Year Ended December 31, 1945

Sales .....		\$104,095.49	
Cost of Sales .....		84,662.46	
Gross profit on sales .....			19,433.03
Operating Expense			
Accounting .....	\$	495.00	
Insurance .....		614.27	
Bank charges .....		8.45	
Laundry .....		23.20	
Light, gas, and power .....		401.05	
Rent .....		1,800.00	
Repairs .....		37.20	
Scavenger .....		45.00	
Supplies .....		100.50	
Taxes and licenses .....		1,405.03	
Telephone .....		147.83	
Wages .....		11,554.77	
Water .....		38.34	
Window cleaning .....		36.00	
Miscellaneous expense .....		91.06	
Depreciation .....		208.32	17,006.02
Net operating income .....			2,427.01
Other Income			
Miscellaneous income .....			1,484.30
Net income for period .....	\$		3,911.31

## Day-Nite Cigar Store

Statement of Income and Expense for  
Year Ended December 31, 1946

Sales .....		\$98,529.66
Cost of Sales		
Inventory, January 1, 1946 .....	\$ 23,694.59	
Purchases .....	78,640.31	
	<u>102,334.90</u>	
Less: Inventory, December 31, 1946 .....	22,466.44	79,868.46
	<u>                    </u>	<u>                    </u>
Gross profit on sales .....		18,661.20
Operating Expense		
Supplies .....	74.69	
Window washing .....	33.00	
Laundry .....	22.89	
Repairs .....	34.59	
Wages .....	11,811.29	
Rent .....	2,400.00	
Light, power, and water .....	867.50	
Telephone and telegraph .....	203.46	
Taxes .....	952.42	
Bank charges .....	8.83	
Office expense .....	425.00	
Donations .....	125.00	
Services .....	15.87	
Insurance .....	461.69	
Depreciation .....	210.00	
Payroll taxes .....	249.13	17,895.36
	<u>                    </u>	<u>                    </u>
Net operating income .....		765.84
Other Income .....		1,644.57
		<u>                    </u>
Net income for period .....		\$ 2,410.41
		<u>                    </u>

## United States of America

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## 110 Eddy Street

Net Worth and Partners' Capital Accounts  
December 31, 1943, 1944, 1945, and 1946

	12/31/1943	12/31/1944	12/31/1945	12/31/1946
<b>Assets</b>				
Bank of America—110 Eddy Street account.....	\$ 3,946.62	-----	\$ 6,141.46	(\$1,803.65)
Bank of America—Wm. E. Kyne account.....	3,565.51	\$ 216.43	-----	-----
Bad check account .....	-----	376.62	26.10	-----
Cash change fund .....	400.00	1,600.00	1,400.00	1,400.00
Inventory .....	22,510.00	28,131.45	25,059.62	26,775.00
Furniture, fixtures, and equipment .....	10,495.90	11,759.61	13,496.39	13,496.39
Prepaid taxes .....	547.75	552.75	1,050.00	525.00
Prepaid insurance .....	333.93	160.00	428.36	328.36
Prepaid rent .....	210.00	210.00	210.00	-----
Liquor license .....	1,000.00	1,000.00	1,000.00	1,000.00
Due from Day-Nite Cigar Store .....	-----	-----	365.29	880.67
				(123.70)
	<u>\$43,009.71</u>	<u>\$44,006.86</u>	<u>\$49,177.22</u>	<u>\$42,478.07</u>

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	12/31/1943	12/31/1944	12/31/1945	12/31/1946
<b>Liabilities</b>				
Accounts payable .....	\$ 4,375.64			
Accrued expenses .....			\$ 68.50	
Accrued payroll taxes .....	508.35	\$ 735.71	\$ 844.93	
Accrued sales tax .....	203.81	227.01		
Depreciation reserve .....	1,637.00	2,459.00	3,341.00	\$ 4,361.00
	<u>6,724.80</u>	<u>3,421.72</u>	<u>4,254.43</u>	<u>4,361.00</u>
Net worth .....	36,284.91	40,585.14	44,922.79	38,117.07
	<u>\$43,009.71</u>	<u>\$44,006.86</u>	<u>\$49,177.22</u>	<u>\$42,478.07</u>
<b>Capital Accounts—Per Books</b>				
Wm. E. Kyne .....		\$ 3,170.29	\$ 6,250.03	\$11,782.53
Frank Cavani .....		3,170.30	3,582.18	7,391.40
Clarence Bent .....	(\$3,206.02)			
Thos. C. Turner .....		3,170.29	613.13	5,415.85
Elmer F. Remmer .....		3,170.29	3,292.03	8,824.53
Wm. E. Kyne, trustee account .....	24,322.33	19,728.23	5,985.34	5,985.34
1942 undistributed profits .....	5,474.18	2,268.16	2,268.16	2,268.16
1943 net profit .....	10,275.73	10,275.73		
1945 undistributed profits .....			22,130.00	
1946 undistributed loss .....				(3,309.24)
	<u>\$36,866.22</u>	<u>\$44,953.29</u>	<u>\$44,120.87</u>	<u>\$38,358.57</u>

Schedule No. 3—Page 2

110 Eddy Street

Net Worth and Partners' Capital Accounts  
December 31, 1943, 1944, 1945, and 1946

## Capital Accounts—As Adjusted

	12/31/1943	12/31/1944	12/31/1945	12/31/1946
Wm. E. Kyne .....	\$ 3,877.79	(\$1,184.69)	\$ 3,212.92	\$ 2,385.61
Frank Cavani .....	3,121.74	6,292.04	9,114.68	6,564.09
Clarence Bent .....				
Thos. C. Turner .....	910.51	4,080.80	6,145.63	4,588.54
Elmer F. Remmer .....	28,956.18	35,765.14	25,647.64	24,820.33
	<u>\$36,866.22</u>	<u>\$44,953.29</u>	<u>\$44,120.87</u>	<u>\$38,358.57</u>

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## Partners' Capital Accounts

	Clarence Bent	Wm. E. Kyne	Frank Cavani	Thos. C. Turner	Elmer F. Remmer	Total
Balance, December 31, 1943 .....	(\$3,206.02)				\$24,322.33	\$21,116.31
Distribution of 1942 profit .....	3,206.02	\$ 756.05			1,512.11	5,474.18
Distribution of 1943 profit .....		3,121.74	\$3,121.74	\$ 910.51	3,121.74	10,275.73
Balance after adjustments, December 31, 1943 .....		3,877.79	3,121.74	910.51	28,956.18	36,866.22
Drawings—1944 .....		8,232.77			9,182.33	17,415.10
Capital contributions—1944 .....		(4,354.98)	3,121.74	910.51	19,773.85	19,451.12
Distribution of 1944 profit .....		3,170.29	3,170.30	3,170.29	12,821.00	12,821.00
Balance, December 31, 1944 .....		(1,184.69)	6,292.04	4,080.80	35,765.14	44,953.29
Drawings—1945 .....		1,134.89	2,709.86	3,467.67	15,650.00	22,962.42
Distribution of 1945 profits .....		(2,319.58)	3,582.18	613.13	20,115.14	21,990.87
Balance, December 31, 1945 .....		5,532.50	5,532.50	5,532.50	5,532.50	22,130.00
Drawings—1946 .....		3,212.92	9,114.68	6,145.63	25,647.64	44,120.87
Distribution of 1946 loss .....		3,212.92	7,391.40	5,415.85	25,647.64	41,667.81
		827.31	827.31	827.31	827.31	3,309.24
		\$2,385.61	\$6,564.09	\$4,588.54	\$24,820.33	\$38,358.57

\*In view of Kyne's testimony that Remmer provided the initial investment and cost of improvements, the Wm. E. Kyne trustee account has been included in the Remmer capital account.

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United States of America

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Schedule No. 3—Page 3

110 Eddy Street  
Profit and Loss Statement for the  
Year Ended December 31, 1946

Income

Sales .....	\$59,863.07	
Less: Sales tax .....	1,455.03	\$58,408.04

Cost of sales

Inventory—January 1, 1946 .....	25,059.62	
Purchases		
Merchandise .....	\$ 1,605.57	
Beer and wine .....	5,709.97	
Liquor .....	14,084.52	21,400.06
	46,459.68	
Less: Inventory—December 31, 1946 .....	26,775.00	19,684.68

38,723.36

Miscellaneous income .....		9.11
----------------------------	--	------

38,732.47

Expenses

Payroll .....	22,450.00	
Miscellaneous expenses .....	621.93	
Repairs and replacements .....	1,173.08	
Light, power, heat, and water .....	572.36	
Telephone and telegraph .....	185.29	
Cash over and short .....	(2.15)	
Rent .....	2,310.00	
Taxes and licenses .....	1,136.50	
Laundry and linen .....	370.08	
Supplies .....	194.90	
Advertising and printing .....	93.83	
Other expense (office, etc.) .....	1,190.98	
Donations .....	250.00	
Payroll taxes		
Social security .....	\$225.87	
California unemployment tax..	598.94	824.81
Transfer of state liquor license .....	262.50	
Revenue stamps .....	57.30	
Insurance .....	798.84	
Depreciation .....	1,020.00	
Legal and accounting .....	3,098.18	
A.D.T. service .....	233.28	36,841.71

1,890.76

Less: Salary of Frank Cavani .....		5,200.00
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Loss for period .....	\$ 3,309.24
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Schedule No. 4

**Menlo Club**  
**December 31, 1945, and December 31, 1946**  
**Assets, Liabilities, and Net Worth**

Assets	December 31, 1945	December 31, 1946
Petty cash and change funds		
Menlo Bar } testimony Maundrell	\$ 300.00	\$ 300.00
Tiny's Restaurant } p. 1270	500.00 \$	500.00 \$ 800.00
Bankroll—Club—cash (Ex. 114 and 114 (a) )	1,497.00	2,503.00
Bankroll—Club—markers (Ex. 114 and 114 (a) )	8,503.00	7,500.00
Advances for construction and furniture at 50 Mason Street	7,489.76	8,600.20
Deposits, Pacific Gas & Electric Co. (Ex. 132 (b) and Ex. 133 N)	1,030.00	1,030.00
Deposit on lease (Ex. 132 A)	4,000.00	4,000.00
Merchandise inventories (Ex. 89, 90, 91, and Def. Ex. Y)	25,337.77	28,539.09
Cost of 10-year lease	100,000.00	100,000.00
Cost of other assets at acquisition	75,000.00	
Inventory at purchase (Ex. 89)	31,198.50	43,801.50
Neon sign (Ex. 132 C)	500.00	500.00
Equipment (Ex. 133 K)	920.00	920.00

Crocker First National Bank (Ex. 27) .....	5,492.69	10,632.87
Adjustment for outstanding checks and deposits in transit (Ex. 162 and 162 (a) ) .....	4,779.39	713.30
Improvements and replacements in 1946 (Ex. 134 (c), 135 (i), 136 (a), (b), (c), (d), (e), (f) (see Note 1) .....		2,355.16
Bank of America NT&SA—Menlo Club account (Ex. 34) .....		15,265.54
		<u>\$218,483.85</u>
<b>Liabilities</b>		
Reserve for amortization of lease .....	\$ 6,666.67	\$ 16,666.67
Reserve for depreciation (schedule attached) .....	5,951.53	15,139.34
Liability for checks issued in January, 1946, and January, 1947, which were entered in December, 1945, and December, 1946, disbursement record (Ex. 127, 128, and 129) .....	26,464.18	17,264.58
Total liabilities .....	39,082.38	49,070.59
Net worth .....	155,509.95	169,413.26
		<u>\$218,483.85</u>

Note 1. Some of the items included in this sum might also have been handled as expense. The testimony is not too clear on the individual items.

Schedule No. 4—Page 2

Menlo Club  
December 31, 1945, and December 31, 1946  
Partners' Capital Accounts

	Remmer	Kyne	Dito	Maundrell	Nelson	Frieker	Turner	Total
Investment in assets acquired May 1, 1945....	\$175,000.00							\$175,000.00
Net profit for 1945 as revised .....	40,254.90	\$15,095.59	\$10,063.73	\$10,063.73	\$10,063.73	\$10,063.73	\$5,031.86	100,637.26
	215,254.90	15,095.59	10,063.73	10,063.73	10,063.73	10,063.73	5,031.86	275,637.26
Withdrawals in 1945 ...	120,127.31							120,127.31
Balance, Dec. 31, 1945..	95,127.59	15,095.59	10,063.73	10,063.73	10,063.73	10,063.72	5,031.86	155,509.95
Net profit for 1946 as revised .....	36,876.36	10,057.19		6,704.79	10,057.19		3,352.39	67,047.92
	132,003.95	25,152.78	10,063.73	16,768.52	20,120.92	10,063.72	8,384.25	222,557.87
Withdrawals in 1946 ...	17,382.56	16,005.50	4,490.57	3,997.80	3,378.29	3,599.56	2,130.33	50,984.61
Contributions .....	1,188.00	324.00		216.00	324.00		108.00	2,160.00
	18,570.56	16,329.50	4,490.57	4,213.80	3,702.29	3,599.56	2,238.33	53,144.61
Balance, Dec. 31, 1946..	\$113,433.39	\$ 8,823.28	\$ 5,573.16	\$12,554.72	\$16,418.63	\$ 6,464.16	\$6,145.92	\$169,413.26

Reserve for Depreciation			Depreciation		Accumulated
	Cost	Rate	1945	1946	Reserve Dec. 31, 1946
Assets acquired at May 1, 1945.....	\$43,801.50	•20% (8 mos.)	\$5,840.20	\$8,760.30	\$14,600.50
Equipment acquired—1945 .....	920.00	10% (8 mos.)	61.33	92.00	153.33
Improvements and replacements—1946 .....	2,355.16	20%	.... (6 mos.)	235.51	235.51
Neon sign—1945 .....	500.00	20% (6 mos.)	50.00	100.00	150.00
			<u>\$5,951.53</u>	<u>\$9,187.81</u>	<u>\$15,139.34</u>

•The assets acquired at May 1, 1945, consist of an on sale liquor permit as well as bar, restaurant, and club room equipment. In view of the fact that the equipment acquired was used, an estimated remaining life of five years has been used for depreciation purposes. This estimated life is based on the fact that restaurant operators acquiring new equipment commonly use an estimated life of eight years; therefore, an estimated life of five years for used equipment is reasonable.

The depreciation for each year is, however, overstated due to the fact that the liquor permit is not an asset subject to depreciation. No evidence has been submitted as to the value of the permit at date of acquisition.

## Menlo Club

December 31, 1945, and December 31, 1946

Computation of Revised Net Income and Determination of Cash  
Withdrawn From Business Year Ended December 31, 1945

Gross income per return and amended return filed.....	\$266,164.50
Expenses per return as amended excluding depreciation and amortization of leasehold .....	\$141,182.14
Depreciation as adjusted .....	5,951.53
Amortization of leasehold .....	6,666.67
Net income for year as revised .....	112,364.16
Less: Salaries of partners .....	11,726.90
Net income to be allocated to partners.....	\$100,637.26
Cash to Be Accounted for at December 31, 1945 .....	\$100,637.26
Net profit as shown above .....	
Add back non-cash items .....	
Depreciation .....	\$ 5,951.53
Amortization of leasehold .....	6,666.67
Reduction in inventory between May 1, 1945, and December 31, 1945.....	5,860.73
Checks issued in January, 1946, recorded as December, 1945, disbursements but not shown as outstanding at December 31, 1945.....	26,464.18
	44,943.11
	145,580.37

Less: Following cash funds and assets for which cash was used during year

Petty cash funds .....	800.00
Bankroll .....	10,000.00
Advances to 50 Mason Street .....	7,489.76
Deposits—Pacific Gas & Electric Co. ....	1,030.00
Deposit on lease .....	4,000.00
Neon sign .....	500.00
Equipment .....	920.00
Balance in Crocker National Bank.....	713.30

25,453.06

120,127.31

120,127.31

Cash to be accounted for .....

Cash withdrawn from business by Remmer.....

Balance on hand December 31, 1945.....

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Menlo Club  
December 31, 1945, and December 31, 1946

Computation of Revised Net Income and Determination of Cash  
Withdrawn From Business Year Ended December 31, 1946

Gross income per return and amended return.....	\$369,781.85
Expenses per return excluding depreciation and amortization.....	\$274,225.28
Less: Items of repairs and replacements considered to be capital items rather than expense.....	2,355.16
	<u>271,870.12</u>
Depreciation .....	9,187.81
Amortization of leasehold .....	10,000.00
	<u>291,057.93</u>
Net income .....	78,723.92
Less: Partners' Salaries .....	11,676.00
	<u>\$ 67,047.92</u>
	<u>\$ 67,047.92</u>
Cash to Be Accounted for at December 31, 1946	
Net profit as shown above.....	
Add back non-cash items .....	
Depreciation .....	\$ 9,187.81
Amortization of leasehold .....	10,000.00
Checks issued in January, 1947, recorded as December, 1946, disburse- ments but not shown as outstanding at December 31, 1946.....	17,264.58
	<u>36,452.39</u>



Less: Following items for which cash was used during year

Advances for 50 Mason Street.....	1,110.44
Difference between inventories January 1, 1946, and December 31, 1946.....	3,201.32
Increase in balance on deposit in Crocker National Bank during year.....	1,956.06
Improvements and replacements capitalized in 1946.....	2,355.16
Deposit in Bank of America at December 31, 1946.....	15,265.54

Partners' drawings

Dito .....	\$ 4,490.57
Nelson .....	3,378.29
Maudrell .....	3,997.80
Turner .....	2,130.33
Fricker .....	3,599.56
Kyne .....	16,005.50
	<hr/>
	33,602.05

Donations .....

2,160.00

Increase in bankroll .....

3.00

Checks paid in 1946 entered in 1945.....

26,464.18

86,117.75

Withdrawn by Remmer .....

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\$ 17,382.56

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*Elmer F. Remmer vs.*

Schedule No. 5

## Transit Smoke Shop

Balance Sheet  
December 31, 1946

## Assets

Cash .....	\$	627.04
Advances .....		585.25
Merchandise inventory .....		8,676.28
Furniture, fixtures, off sale permit and lease .....	\$22,000.00	
Less: Depreciation reserve .....	33.33	21,966.67
		<u>\$31,855.24</u>

## Liabilities and Net Worth

Liabilities .....	
Net worth	
Gordon Partee, capital .....	(\$ 77.89)
Wm. E. Kyne, capital .....	15,966.56
E. Remmer, capital .....	15,966.57
	<u>\$31,855.24</u>

## Analysis of Partners' Capital Accounts

	Remmer	Kyne	Partee	Total
Investment, November 1, 1946.....	\$16,005.51	\$16,005.50		\$32,011.01
Net profit—1946 .....	1,054.81	1,054.81	\$2,109.61	4,219.23
	<u>17,060.32</u>	<u>17,060.31</u>	<u>2,109.61</u>	<u>36,230.24</u>
Less: Withdrawals ..	1,000.00	1,000.00	2,000.00	4,000.00
Donations .....	93.75	93.75	187.50	375.00
	<u>1,093.75</u>	<u>1,093.75</u>	<u>2,187.50</u>	<u>4,375.00</u>
Capital accounts, Dec. 31, 1946.....	<u>\$15,966.57</u>	<u>\$15,966.56</u>	<u>(\$77.89)</u>	<u>\$31,855.24</u>

Schedule No. 5—Page 2

## Transit Smoke Shop

## Statement of Income and Expense

November 1, 1946, Through December 31, 1946

Gross Receipts .....	\$21,952.15
Less: State sales tax .....	367.02
	<u>21,585.13</u>

# *United States of America*

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## Cost of Sales

Inventory—November 1, 1946 .....	\$ 8,511.01	
Purchases .....	12,912.34	
	<u>21,423.35</u>	
Less: Inventory—December 31, 1946.....	8,676.28	12,747.07
	<u></u>	<u></u>
Gross profit .....		8,838.06

## Operating Expenses

Advertising .....	5.00	
Insurance .....	88.85	
Lights and water .....	62.71	
Operating supplies .....	93.09	
Payroll taxes .....	107.03	
Telephone .....	31.48	
Rent .....	1,000.00	
Salaries .....	2,886.30	
Services .....	44.00	
Repairs .....	100.87	
Depreciation .....	33.33	
Miscellaneous expense .....	138.44	
Bank charges .....	7.73	
Bad checks .....	20.00	4,618.83
	<u></u>	<u></u>
Net income for tax purposes.....		4,219.23
Less: Donations .....		375.00
	<u></u>	<u></u>
Net income for period.....		\$ 3,844.23

## Determination of Cash at December 31, 1946

Receipts—November 1 through December 31, 1946		
E. Remmer .....	\$ 1,500.00	
November receipts .....	10,658.39	
December receipts .....	11,293.76	
	<u></u>	
		23,452.15
Less: Disbursements		
November .....	\$10,922.94	
December .....	11,902.17	22,825.11
	<u></u>	<u></u>
Cash at December 31, 1946.....	\$	627.04

## Schedule No. 6

## Cal-Neva, Inc.

## Analysis of Elmer Remmer Account No. 10

Giving Effect to Entries as of Years in Which Transactions Occurred Rather Than as of Date of Entries in Cal-Neva, Inc., Records May 1, 1937, to April 30, 1948 (Ex. 146)

Date	Debit	Credit	Debit or (Credit) Balance
5/ 1/1937	Balance brought forward .....	\$ 5,292.40	\$ 5,292.40
9/20/1937	Cash advance .....	600.00	5,892.40
8/ 2/1937	Cash advance .....	1.50	5,893.90
9/30/1937	Flowers for Blight funeral .....	15.45	5,909.35
10/31/1937	Advance—San Francisco News .....	1.12	5,910.47
10/31/1937	Collection from A. Larsen not turned in to office.....	175.00	6,085.47
8/12/1938	Advance by check No. 3337.....	1,000.00	7,085.47
9/30/1938	Advance by check No. 3626.....	1,500.00	8,585.47
11/30/1938	Collector of Internal Revenue for E. Remmer income tax.....	430.00	9,015.47
9/30/1939	Cash advances during 1939 season.....	2,530.00	11,545.47
11/29/1939	Placer County taxes—E. Remmer.....	4.98	11,550.45
2/29/1940	Telegraphic transfer to E. Remmer at Kansas City.....	750.00	12,300.45
	Telegraph charges .....	3.86	12,304.31
4/30/1940	Credit E. Remmer for funds he advanced for account of McKay and Graham .....	\$ 400.00	11,904.31
10/30/1940	Cash advances during 1940 season .....	3,650.00	15,554.31
11/21/1940	Payment made on purchases at J. C. Penney Co. ....	39.00	15,593.31

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## VERTICALLY

Date		Debit	Credit	Debit or (Credit) Balance
7/14/1944	Payment to T.W.A. ....	23.98		18,676.75
	Paid out of petty cash .....	1.00		18,677.75
8/23/1944	Paid to Federal Reserve Bank .....	750.00		19,427.75
9/ 1/1944	Collector of Internal Revenue .....	1,740.91		21,168.66
11/22/1944	Paid to Bank Club—Remmer account .....	1,750.00		22,918.66
12/30/1944	Paid to Bank Club—Remmer account .....	2,968.00		25,886.66
12/31/1944	<sup>2</sup> To reverse entry of July 14, 1944, made April 30, 1945. ....		24.98	25,861.68
	<sup>3</sup> Cash advanced during 1944 season .....		7,500.00	18,361.68
7/19/1945	Check to Helen Remmer .....	2,000.00		20,361.68
8/ 8/1945	Collector of Internal Revenue .....	5,000.00		25,361.68
12/31/1945	<sup>4</sup> Charge Remmer with payment on loan to Mayris Chaney not remitted to corporation (advanced August 28, 1944, collected 1945 season) .....	2,500.00		27,861.68
	<sup>5</sup> To charge E. Remmer with cash advanced to him during 1945 season .....	51,086.34		78,948.02
	<sup>6</sup> To adjust prior entry for bad checks which adjusts unaccounted for cash .....		2,215.69	76,732.33
12/31/1945	<sup>7</sup> To charge E. Remmer with amounts that had been charged in error to Bank Club .....	7,000.00		83,732.33
5/15/1946	Currency .....		76,732.33	7,000.00
6/.../1946	Currency .....		7,000.00	.....
7/28/1946	Collector of Internal Revenue .....	7,724.11		7,724.11

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## United States of America

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Date		Debit	Credit	Debit or (Credit) Balance
	Balance brought forward .....			7,724.11
8/31/1946	Collector of Internal Revenue .....	5,324.11		13,048.22
8/.../1946	Mountain City Consolidated Copper Co. ....	2,400.00		15,448.22
9/24/1946	W. J. Graham .....	50,000.00		65,448.22
9/24/1946	J. C. McKay .....	50,000.00		115,448.22
9/28/1946	Telegraphic transfer—Day-Night Branch .....		50,000.00	65,448.22
4/30/1947	Withdrawals during 1946 season .....	62,594.17		128,042.39
4/30/1947	Advanced by E. Remmer .....	20,000.00		108,042.39
10/26/1941	Currency deposited .....	47,300.00		60,742.39
1/16/1947	E. Remmer .....	20,000.00		80,742.39
2/ 8/1947	E. Remmer .....	20,000.00		100,742.39
	E. Remmer .....	15,000.00		115,742.39
3/28/1947	E. Remmer—telegraphic transfer .....		5,000.00	110,742.39
5/12/1947	Currency deposited .....		5,000.00	105,742.39
6/11/1947	Currency deposited .....		14,000.00	91,742.39
8/27/1947	Telegraphic transfer .....		15,000.00	76,742.39
9/16/1947	Currency deposited .....		25,000.00	51,742.39
10/ 7/1947	Telegraphic transfer .....		15,000.00	36,742.39
10/28/1947	Telegraphic transfer .....		15,000.00	21,742.39
1/26/1948	Currency deposited .....		6,000.00	15,742.39
2/13/1948	Check on First National Bank of Nevada, Main Office, Reno, Nevada .....		5,000.00	10,742.39
4/30/1948	Balance at close of corporation's fiscal year .....			10,742.39

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## Cal-Neva, Inc.

Analysis of Elmer Remmer Account No. 10  
Giving Effect to Entries as of Years in Which Transactions  
Occurred Rather Than as of Date of Entries in Cal-Neva, Inc.,  
Records May 1, 1937, to April 30, 1948 (Ex. 146)

Summary of Amounts Owed to Cal-Neva, Inc., by Elmer Remmer  
as of December 31, 1943, 1944, 1945, and 1946

Date	Amount Owed	Net Amount Borrowed or (Paid Back) During Year
December 31, 1943.....	\$23,152.77	
December 31, 1944.....	18,361.68	(\$ 4,791.09)
December 31, 1945.....	83,732.33	65,370.65
December 31, 1946.....	60,742.39	( 22,989.94)
Net amount borrowed during 1944, 1945, and 1946—		\$37,589.62

## Notes

<sup>1</sup> On April 30, 1945, E. Remmer Account No. 10 was debited with the following loans made to Albert Villaudy:

December, 1941 .....	\$2,500.00
April, 1943 .....	3,500.00
July, 1943 .....	2,000.00
	<u>\$8,000.00</u>

This adjustment was made on the basis that the amounts were loaned to Mr. Villaudy by E. Remmer rather than the corporation. Therefore, the amount due Cal-Neva, Inc., by E. Remmer at December 31, 1943, has been increased by the amount of these loans.

<sup>2</sup> To correct amounts charged improperly to E. Remmer on July 14, 1944, consisting of:

\$23.98
1.00
<u>\$24.98</u>

<sup>3</sup> To reflect cash advanced during 1944 season as having been made in that calendar year rather than as of April 30, 1945, the end of the corporate fiscal year, the date the amount was credited in the corporate records.

<sup>4</sup> To reflect the receipt of \$2,500.00 by E. Remmer from Mayris Chaney in payment of loan made to her during 1944 season which she repaid during 1945 season and which was reflected in corporate records as of the close of the corporate fiscal year, April 30, 1946.



\* To reflect cash advanced to E. Remmer during 1945 season which was entered in corporate records as of April 30, 1946, the close of the corporate fiscal year.

\* To adjust amount charged to E. Remmer for withdrawals during 1945 season due to bad checks which were included in determining cash received by him. This entry was entered in corporate records as of close of corporate fiscal year, April 30, 1946, rather than in calendar year 1945.

' To reflect entry charging E. Remmer for amounts paid out during 1945 season which were charged in error to Bank Club. This entry was entered in corporate records as of close of fiscal year, April 30, 1946, rather than during year 1945.

[Endorsed]: Filed February 11, 1952.

DEFENDANT'S EXHIBIT O

Form 1065—Treasury Dept., Internal Revenue Service 1944

United States

Partnership Return of Income

(To Be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1944

or fiscal year beginning ....., 1944, and ending ....., 1945

B-R Smoke Shoppe

50 Mason Street

San Francisco, California

[Stamped]: 94 Received April 14, 1947, Coll. Int. Rev., 1st Dist. Cal. 3.

[Shown in pencil on original]: 45-8704686; S. L. Ezralow O.R.A.

Gross Income

Amended

13. Total income in items 3 to 12.....\$12,000.00

Deductions

26. Ordinary net income (item 13 less item 25).....\$12,000.00

Schedule I.—Partners' Shares of Income and Credits.

(See Instruction for Schedule I)

2. Ordinary net income  
less interest on

1. Name and address of each partner Gov't obligations etc.

(a) Elmer Remmer, Orinda, California.....\$4,440.00

(b) Wm. F. Kyne, 975 Lawton Ave., San Francisco..... 5,340.00

(c) Sylvan Lando, 611 Marina Blvd., San Francisco..... 2,220.00

Totals.....\$12,000.00

## Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ WM. E. KYNE, partner, April 9-47.  
975 Lawton Avenue, San Francisco.

/s/ A. B. SLATER, P.A., 4/5/47.  
Name of firm or employer Self.

Subscribed and sworn to before me this 9th day of April, 1947.

[Seal]

/s/ RUTH NATUSCH.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires Jan. 3, 1951.

[Endorsed]: Filed December 10, 1951.

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DEFENDANT'S EXHIBIT X

March 12, 1947.

Mr. Pat Mooney  
800 South Center Street  
Reno, Nevada

Dear Pat,

I am enclosing the applications for extension of both Helen and Bones Remmer. I note in your letter that you have asked us what the cost of the Menlo Club was. The total payment is \$175,000.00 of which \$100,000.00 has been paid down. Up until this time no credit of any kind to cover the capital investment has been entered on the books. The Menlo Club, as you may know, is a partnership consisting of Bones, Wm. Kyne, Oscar Nelson, Thos. Turner and myself. If there is any further information I can give you kindly call upon me.

At the present time I have Bones' income taxes for the following places already filed, namely: Menlo Club, 110 Eddy St., Day-Nite Cigar Stand, and the Transient Cigar Store. Any time you are ready for the figures I will be glad to forward them to you. With my kindest personal regards, I remain

Sincerely yours,

HAROLD H. MAUNDRELL.

HHM/ed

[Endorsed]: Filed December 27, 1951.

## DEFENDANT'S EXHIBIT Y

## Amended Return.

Form 1065—Treasury Dept., Internal Revenue Service 1945

United States

Partnership Return of Income

(To Be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1945

year Beginning May 1, 1945, and ending Dec. 31, 1945

Menlo Club

30 Turk Street

San Francisco, California

Business or Profession Social Club.

File Code 1952.

[Stamped]: 94 Received May 15, 1947, Coll. Int. Rev., 1st  
Dist. Cal., 59; Internal Revenue Agent in Charge, San Fran-  
cisco, Received June 1, 1948.

[Shown in pencil on original]: Morgan; 8704459.

## Gross Income

- |   |              |
|---|--------------|
| 1. Gross receipts from business or profession.....                                  | \$558,632.00 |
| 2. Less cost of goods sold:   |              |
| (a) Promotion Expense .....   | \$286,837.75 |
| (d) Total of lines (a), (b) & (c)....   | \$286,837.75 |
| (e) Less inventory at end of year.....  | 286,837.75   |
| 3. Gross profit (or loss) from business or profession<br>(item 1 less item 2) ..... | \$271,794.25 |
| 4. Income (or loss) from other partnerships, etc.<br>Tiny's Waffle Shop: Loss.....  | (5,629.75)   |
| 13. Total income in items 3 to 12.....  | \$266,164.50 |

[Italicized figures shown in red on original.]

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## Deductions

14. Salaries and wages (do not include compensation for partners) .....	\$114,491.87
15. Rent .....	5,200.00
16. Repairs .....	1,059.14
18. Taxes (explain in Schedule C).....	4,679.45
21. Depreciation (explain in Schedule E).....	136.00
22. Amortization of emergency facilities (attach statement) .....	19,173.52
24. Other deductions authorized by law (explain in Schedule F) .....	19,893.40
25. Total deductions in items 14 to 24.....	<u>\$164,633.38</u>
26. Ordinary net income (item 13 less item 25).....	<u>\$101,531.12</u>

## Schedule C.—Taxes. (See Instruction 18)

Nature	Amount
Old Age Benefit .....	\$1,262.19
Calif. Unem. Reserves .....	3,407.91
Personal Property .....	9.85
Total (enter as item 18, page 1).....	<u>\$4,679.95</u>

## Schedule E.—Depreciation. (See Instruction 21)

1. Kind of property—Furniture and Fixtures.
  2. Date acquired—5/1/45.
  3. Cost or other basis—\$2,000.00.
  5. Depreciation allowed (or allowable) in prior years—8/12/45.
  7. Estimated life used in accumulating depreciation—10 years.
  8. Estimated remaining life from beginning of year—9 years.
  9. Depreciation allowable this year—\$136.00.
- |  |                 |
|--|-----------------|
| Total (enter as item 21, page 1) ..... | <u>\$136.00</u> |
|--|-----------------|

Schedule I.—Partners' Shares of Income and Credits.  
(See Instruction for Schedule I)

1. Name and address of each partner	2. Ordinary net income etc. Total	3. Net short-term etc. Profit	4. Net long-term etc. Wages
(a) Elmer F. Remmer, Cal-Neva, Tahoe .....	\$ 35,921.69	\$35,921.69	
(b) Kyne, William E., 975 Lawton St., S.F. ....	13,470.64	13,470.64	
(c) Masse Dito, 1245 Ray Street, S.F. ....	12,660.94	8,980.42	\$ 3,680.52
(d) Oscar F. Nelson, 180 Turk St., S.F. ....	9,625.92	8,980.42	645.50
(e) Harold H. Maundrell, 50 Mason St., S.F. ....	11,080.42	8,980.42	2,100.00
(f) Wm. E. Fricker, 30 Turk Street, S.F. ....	11,881.30	8,980.42	2,900.88
(g) Thomas C. Turner, 385 Grand Ave., Oakland, Cal. ....	6,890.21	4,490.21	2,400.00
	<hr/> \$101,531.12	<hr/> \$89,804.22	<hr/> \$11,726.90

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## Questions

1. Date of organization May 1, 1945.
2. Nature of organization Partnership.
3. Was a return of income filed for preceding year? No. If so, to which collector's office was it sent? No.
4. Check whether this return was prepared on the cash [ X ] or accrual [ ] basis.
5. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market whichever is lower No Inventory.
6. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or of a personal holding company, as defined in section 501 of the Internal Revenue Code? No.
7. Was return of information of Forms 1096 and 1099, or Form W-2a, filed for the calendar year 1945? Yes.

## Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return.

/s/ ELMER REMMER.

/s/ C. D. AYTON, P.A., 5/2/47.

Subscribed and sworn to before me this 15th day of May, 1947.

[Seal]

/s/ JOHN A. BURNS.

Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires April 12, 1949.

Menlo Club  
30 Turk Street, San Francisco

May 10, 1946.

The Collector of Internal Revenue,  
San Francisco, California.

[Stamped]: 94 Received May 15, 1947, Coll. Int. Rev., 1st Dist. Cal., 59.

Dear Sir:

In submitting the accompanying Partnership Return, taxpayer desires to state that the daily records of the Cash Receipts and Promotion Expenses of the Menlo Club were inadvertently destroyed in mistake for other papers, and were consequently unavailable for computation. Disbursements for rent, salaries and wages, cards and all other expenses for which receipts were taken and recorded separately are available, and have been properly reported.

In order to submit what is believed to be more than a fair return to the Government, the cash receipts and promotion expenses for a like period in the preceding year have been used as a basis of income after deducting an amount of \$6,000.00 per month from the promotion expense; and since that period was the most profitable in the Club's history, and the income under the new owners has noticeably decreased; which is amply demonstrated by the reduction of players attending the morning shift.

Regretting the necessity for this method of filing, we are,

Very truly yours,  
 MENLO CLUB,  
 By ELMER REMMER,  
 Partner.

[Italicized figures shown in red on original.]

Tiny's Waffle Shop & Bar  
 18-24 Turk Street

Profit and Loss Statement

Period—May 1 to December 31, 1945

Income:

Sales: Food .....	\$126,588.08
Bar .....	43,152.89

Total Sales .....	169,740.97
-------------------	------------

Inventory—May 1, 1945:

Beer and Liquor .....	\$25,675.50
Food .....	5,523.00

Merchandise Purchases:

Liquor .....	\$ 7,851.32
Beer .....	4,266.36
Food .....	48,312.22

91,628.40

Less Inventory December 31, 1945:

Liquor and Beer and Food .....	25,337.77
--------------------------------	-----------

Cost of Sales .....	66,290.63
---------------------	-----------

Gross Profit .....	103,450.34
--------------------	------------

Expense:

Salaries and Wages .....	73,849.84
Rent .....	8,000.00
Sales Tax .....	4,159.50
Advertising .....	541.10
Ice .....	383.16
Laundry .....	2,175.38
Bar Supplies .....	664.36

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Expense (continued): Carried Forward.....89,773.34

House Supplies ..... 1,846.40

Licenses and Federal Stamps ..... 652.58

Garbage Disposal ..... 431.00

Insurance ..... 2,054.86

Social Security Tax ..... 716.06

Unemployment Reserves Tax ..... 1,933.38

Repairs and Maintenance ..... 3,222.89

Telephone ..... 158.41

Bar Service ..... 128.71

Miscellaneous Expense ..... 3,024.42

Light, Heat and Water ..... 1,673.23

Office Supplies ..... 39.24

Miscellaneous Taxes ..... 244.35

Total Expense .....105,898.87

Add—Depreciation:

Tiny's Shop ..... 3,870.00

Neon Sign ..... 100.00

Furniture and Equipment .... 171.72    4,141.72    110,040.59

Net Loss From Operations ..... (6,590.25)

Other Income—From Coin Machines ..... 960.50

Total Net Loss for Period..... (5,629.75)

Menlo Club  
30 Turk St., San FranciscoIncome Tax  
Period May 1 to December 31, 1945

Deductions: Item 24

Laundry .....\$ 997.62

General Miscellaneous Expense ..... 85.80

Bank Charges and Returned Checks ..... 2,960.43

Scavenger ..... 80.00

Supplies, Janitor and Miscellaneous..... 745.31

Light and Power ..... 1,115.46

Telephone and Telegraph ..... 285.48

Playing Cards ..... 12,332.34

Poker Chips ..... 1,000.00

Stationery and Supplies ..... 151.45

Water ..... 139.51

Total Item 24.....\$19,893.40



Depreciation 21

The Menlo Club was purchased by E. F. Remmer and associates on May 1st, 1945, for the sum of \$175,000.00, which after deducting merchandise and certain fixtures on hand of \$31,985.50 leaves a capital investment of \$143,801.50. The term of the lease is five years and the investment spread over this period, makes a capital recovery as follows: eight months of 1945 the sum of \$19,173.52 and for each year thereafter, the sum of \$28,760.15 until 1950, when the remaining payment will be \$9,586.76.

The Menlo Club is used primarily for the playing of cards and is known as a Card Club, the principal game being draw poker.

At the present time in San Francisco a new law is being drafted and if passed in its present form it would put the Menlo Club out of business, also, at this time a new proposed State Law has been presented to the State Legislature, which would outlaw all playing of cards for money, tokens, checks, etc., and this would do likewise to the club.

The Menlo Club is under the supervision of the Chief of Police of San Francisco and any disturbance on the part of any of the players in the club, which might bring any undue notoriety or disrepute, might mean the revocation of the Club's license, as a public nuisance. At the same time several law suits are pending against the Club, and a decision against the Club might result in its closing. There are a great many factors entering into the operation of a club of this nature and while, at the present time, draw poker is within the rights of all Club Members, there is a general antipathy on the part of the public to condemn and call all card rooms, "Gambling Houses," which makes their operation precarious business and one which is more or less intangible as to its existence. There are a great many elements working against Card Rooms and they may be closed or Legislated out at a moment's notice.

We firmly believe this property which was acquired through Capital outlay for the production of income is subject to depreciation:

- (1) Because the production of income is limited in duration, because of a great many factors,
- (2) That it is a sort of intangible property and the business may be legislated or closed out of existence at any time,
- (3) That the estimated useful life of the property is five years.

[Endorsed]: Filed December 27, 1951.

## DEFENDANT'S EXHIBIT Z (For Identification)

San Francisco, California  
March 7, 1949

## To Whom It May Concern :

On April 30, 1945, the undersigned, Gene Schriber, received the sum of \$25,000.00 cash, lawful money of the United States of America, from Joseph C. Haughey, who was at that time acting as attorney for Elmer Remmer, for and on account of moneys due the undersigned in connection with the purchase of "Tiny's Bar," situated at 18 Turk Street, "Tiny's Restaurant" situated 30 Turk Street, and the "Menlo Club" situated at 32 Turk Street, all in San Francisco, California.

Although the name of Joseph Billington was used in this transaction, Elmer Remmer was in truth and in fact the person who was purchasing said businesses.

Thereafter, in or about the month of August, 1945, Elmer Remmer approached me and stated that he had some partners associated with him in the operation of the foregoing described businesses and that he wanted his records to reflect the payment of the \$25,000.00 theretofore paid to me in cash.

A few days later, on August 8, 1945, Elmer Remmer presented me with a check in the sum of \$25,000.00 payable to my order, and I thereupon endorsed my name thereto and cashed the same and gave the \$25,000.00 to Elmer Remmer. This check was not an additional payment on the purchase price of the Menlo Club but was merely an accommodation transaction for Remmer's record. A memorandum made by me at the time shows that this check was made, executed and endorsed on August 8, 1945.

Thereafter, and on September 8, 1945, Elmer Remmer paid to me the sum of \$25,000.00 by check.

Subsequent to September 8, 1945, the liquor license of "Tiny's Bar" situated at 18 Turk Street was suspended by the State Board of Equalization because of the failure of the undersigned to effect a transfer of such license. Accordingly, "Tiny's Bar" was closed and the third payment which was due during the year 1945 was not made by Elmer Remmer because of the failure of the undersigned to deliver a Liquor License to said premises occupied by "Tiny's Bar" as per agreement.

This payment of \$25,000.00 was thereafter made on February 28, 1946.

On May 1, 1946, I received a payment of \$25,000.00 and thereafter on May 1, 1947, I received another payment of \$25,000.00 from Elmer Remmer.

Between April 30, 1945, and May 1, 1947, I received a total of \$125,000.00 from Elmer Remmer on account of the purchase of the said businesses and the leasehold interests upon said premises hereinabove described. Also, on July 1, 1949, I received

from Elmer Remmer on account another \$25,000.00 making a total received from April, 1945, to July, 1949, of \$150,000.00.

/s/ GENE SCHRIBER.

The Undersigned, Elmer Remmer, has read the foregoing statement, and does hereby certify that the foregoing statement made by Gene Schriber is true and correct in all respects.

Dated at San Francisco, California, this ..... day of March, 1949.

/s/ ELMER REMMER.

[Endorsed] : Filed December 28, 1951.

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No. 13281

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**United States  
Court of Appeals**  
for the Ninth Circuit.

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ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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**Supplemental  
Transcript of Record**  
**Volume X**  
(Pages 3667 to 3746)

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**Appeal from the United States District Court  
for the District of Nevada.**

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Transcript of Proceedings—Selection of the Jury .....	3667

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In the United States District Court for the  
District of Nevada

No. 12,177

Before: Hon. Roger T. Foley, Judge.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELMER F. REMMER,

Defendant.

JURY TRIAL

SELECTION OF THE JURY

Wednesday, November 28, 1951

The Court: In the case of United States of America vs. Elmer F. Remmer, No. 12,177. The record will show the presence of the defendant with counsel. Are you ready for trial?

Mr. Thompson: The government is ready.

Mr. Lohse: The defendant is ready, subject to adverse rulings which the Court has made with respect to bill of particulars and motion for discovery previously ruled upon by the Court and for relief as prayed for on various motions which your Honor has ruled upon as late as yesterday in this trial.

The Court: The clerk will call the roll of the venire. Before we proceed, I want to inform counsel, you may notice a good many names appear on

the list [1\*] of the venire who have not answered to their names. They have been excused for reasons the Court deems sufficient, sickness, one-man establishments and business and urgent family and business affairs.

Mr. Lohse: Your Honor, on behalf of the defendant, I would like to make inquiry with respect to list of trial jurors which we have. There seem to be some names on there that were neither excused or called.

The Clerk: Many were excused as late as this morning or yesterday.

Mr. Lohse: Every one whose name was not called was excused?

The Clerk: Excused or else the notice came back uncalled for.

The Court: The clerk will please call 12 names.

The following names were called:

1. Laverne Wittwer.
2. Otto Steinheimer, Jr.
3. I. J. Smith.
4. Mitchel Espassen.
5. Leslie S. Kofoed.
6. Richard Curnow.
7. John W. Humphrey.
8. Edward Colletti.
9. Mrs. Helen S. Mack. [2]
10. Herbert Hillygus.
11. Florence Sanford.
12. Norman Dickson.

The Court: Will the attorney for the govern-

\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

ment please state the nature of this case for the guidance of the venire in the box and all others in the court room. Please give attention to this statement.

Mr. Pike: This is a criminal case, in which the United States of America is plaintiff and Elmer F. Remmer is the defendant. The formal charge, or indictment, is in six counts, each of which counts charges that for the particular calendar year involved referred to in that count the defendant violated a certain federal statute, which is referred to as Section 145(b) of the Internal Revenue Code, and the same section, Title 26, United States Code Annotated, which statute makes it an offense for any person to wilfully attempt, in any manner, to evade or defeat any tax.

As applied to this particular case, the charged violation against the defendant is that the particular calendar years 1944, 1945, and 1946 he wilfully and knowingly attempted to defeat and evade a large part of the income tax due and owing by him to the United States, by filing and causing to be filed, with the Collector of Internal Revenue for the Internal Revenue Collection District of Nevada, at Reno, Nevada, a false and fraudulent income tax return, wherein he stated that his [3] net income for the particular calendar year was in a certain specified amount and the amount of tax due and owing on that amount was a certain amount, whereas, according to this charge, as the defendant well knew, his net income for the calendar year, computed on a community property basis, was a

larger amount than had been reported in the false income tax return and the amount of the tax due was larger than the amount that he had paid.

The first count of the indictment refers to the calendar year 1944 and alleges, in substance, what I have already stated, that the defendant Remmer filed a false and fraudulent tax return, stating that his income for that year that was taxable was the sum of \$9,500 and the amount of tax due and owing on that amount was \$2,570, when it is charged that he knew that his income was \$33,734.61 and that the net income tax owed to the United States was \$16,295.54.

Mr. Golden: May I correct counsel. He stated \$33,734.61 and that was \$33,734.60, and also the amount he stated as alleged in tax owing was \$16,295.54. That is \$16,259.54.

Mr. Pike: The copy I had was wrong as to one cent and as to the second item, I incorrectly read by transposing the figures, and the correct figure is \$16,259.54. That is the amount due.

Mr. Golden: While I am on my feet, your Honor, may I at this time take exception and offer objection to the remark which [4] counsel made a few moments ago, in which he states that it is a false return. I object to stating it is a false return—it is alleged false return.

The Court: You may have an exception.

Mr. Pike: I am referring to the form of indictment. May I have the official copy, so there will be no further mistakes.

The second count on this formal charge, indict-

ment, also refers to the calendar year 1944 and besides the substance already referred to, it charges that the defendant Remmer, who was then, during the calendar year 1944, married to Helen L. Remmer, did wilfully and knowingly attempt to defeat and evade income tax for the calendar year 1944, by filing and causing to be filed, with the collector of Internal Revenue for the District of Nevada, a false and fraudulent income tax return for and on behalf of the said Helen L. Remmer, in which it was stated that her net income for the said calendar year, computed on the community property basis, was the sum of \$9,500 and that the amount of tax due and owing thereon was the sum of \$2,570, whereas he then and there well knew her net income for the said calendar year, computed on the community property basis, was the sum of \$33,734.60, upon which net income there was owing to the United States an income tax of \$16,259.54.

Now with reference to that second count, it is to be noted that the defendant is charged with filing, or causing to [5] be filed, a false and fraudulent income tax return for and on behalf of Helen L. Remmer, his wife, during the calendar year 1944, and has already been pointed out, Elmer F. Remmer is the only defendant in this case.

The third count refers to the income tax return filed by the defendant for the calendar year 1945 and charges that a false income tax return was filed, wherein the defendant stated that his net income for that year was \$28,888.68, and that the amount of tax due and owing thereon was the sum

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of \$13,072.02, when he knew that his net income for that calendar year, computed on the community property basis, was the sum of \$37,157.10, upon which net income he owed to the United States an income tax of \$18,586.83.

The fourth count of the indictment likewise refers to the calendar year 1945 and it charges that the defendant, then being married to Helen L. Remmer, during that calendar year, wilfully and knowingly attempting to defeat and evade a large part of the income tax due and owing by the said Helen L. Remmer to the United States for that calendar year, filed, and caused to be filed, with the Collector of Internal Revenue for this district a false and fraudulent income tax return for and on behalf of Helen L. Remmer, in which it was stated that her net income for that calendar year, computed on a community property basis—I might say all counts have that language—was the sum of \$30,429.68 and the amount of tax due and owing was the sum of \$14,074.29, [6] whereas the defendant knew that her net income so computed was the sum of \$38,708.09, upon which said net income there was owing to the United States an income tax of \$19,649.82.

The fifth count of the indictment relates to the calendar year 1946 and it charges that the defendant Remmer, so seeking and attempting to defeat and evade a large part of the income tax due and owing by him for that year, filed and caused to be filed with the Collector of Internal Revenue of this district a false income tax return, wherein he stated that his net income, so computed already referred

to, was the sum of \$11,244.79, and that the amount of tax due and owing thereon was the sum of \$2,776.87 and that the defendant well knew that his net income for the calendar year referred to, that is 1946, was the sum of \$94,235.84, upon which said net income he owed to the United States an income tax of \$61,341.68.

The sixth and last count of this indictment, or formal charge against the defendant, relates also to the calendar year 1946 and it states and charges in substance that during the calendar year 1946 the defendant, Elmer F. Remmer, then being married to Helen L. Remmer, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by the said Helen L. Remmer to the United States of America for the calendar year 1946, by filing and causing to be filed, with the Collector of Internal Revenue for this district, a false and fraudulent income tax return for and on behalf of the [7] said Helen L. Remmer, in which it was stated that her net income for that calendar year, computed on the community property basis, was the sum of \$11,244.79 and that the amount of tax was the sum of \$2,776.87, whereas, as the defendant then and there well knew, her net income for said calendar year, that is, 1946, computed on the community property basis, was the sum of \$94,235.84, upon which said net income there was owing to the United States of America an income tax of \$61,341.68.

Now the reference I have made to the indictment is, of course, in no way evidence in the case and the



indictment itself is the mere formal charge made by the government against the defendant in the case.

The Court: The Court now desires to inform the government and the defendant that if either the government or the defendant desires to challenge a juror, the challenge must be made when the juror appears and before he or she is sworn to try the case. The defendant has ten peremptory challenges, the government six peremptory challenges and I am going to try to arrange the matter this way, that as we approach selecting the jury, we will arrange and alternate the challenges so that toward the end there will be as near as possible an equal number remaining on each side of the peremptory challenges. Now I wish all members of the venire would give close attention, because what is being said here now will apply perhaps to you.

Mr. Gillen: May I interrupt, your Honor. According to [8] my notes, as I took them down, Mrs. Sanford should be in seat 11. She is in seat 12. (Mrs. Sanford takes seat No. 11) I thought it might cause some confusion later on.

The Court: Now, ladies and gentlemen of the jury, you have just heard a statement of the nature of this case. Have any of you heard anything other than the statement of this case. In other words, do you know anything about this case? Have you heard any one discuss this case? I want to be sure you understand this question. Have any of you heard about this case before you came into court today?

Juror Humphrey: I have read it in the paper.



The Court: Did what you read amount to any more than what you have heard in this statement?

A. No, just about the same.

Q. Anything you read, did it leave with you an impression as to whether or not the charge was true, or any opinion as to whether the charge was true?

A. I am afraid I did form an opinion.

Q. You formed an opinion in the case from just what you read in the papers?

A. Yes.

Q. That is all you know about the case?

A. Yes, sir.

Q. Have you discussed the case with any one who knew anything of the facts? [9]

A. No, sir.

Q. Have you any idea what the evidence in this case will be?

A. No, I do not.

Q. All you know is that the defendant is charged with this offense?

A. Yes, sir.

The Court: Any one else here who has read about the case? I suppose several of you have, but the mere reading about this case, has that left with you an opinion as to the guilt or innocence of the defendant?

Juror Hillygus: I have heard gamblers at my bar.

Q. Did they claim to know anything about the evidence?

A. They thought they did. I don't know whether they did or not.

Q. And the conversation that you had with gamblers has left an impression on you, or an

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opinion one way or another? A. Yes, sir.

Q. It would be difficult then for you to sit in this case and listen to this evidence and free your mind from the opinion or impression you gained in your conversations with other people?

A. I don't know.

Q. From what you have heard, if you were asked to give a decision, could you give a decision one way or another at this time?

A. Well, from what I have heard, I think I could.

The Court: Any objection to excusing this juror? [10]

Mr. Thompson: We have no objection, your Honor.

The Court: Any challenge for cause?

Mr. Lohse: Your Honor, the defense has no objection to excusing of either Mr. Hillygus or Mr. Humphrey.

The Court: Mr. Hillygus, you will be excused until January third. Call another name.

(Frank Golden called and sworn.)

The Court: You heard the statement made by Mr. Pike? A. I have.

Q. Have you heard any conversations concerning this case or have you any knowledge of this case other than from what you found from Mr. Pike's statements? A. What I read in the papers.

Q. From what you have read, have you an opinion one way or another as to the guilt or innocence of the defendant? A. None whatsoever.

Q. Your mind is open?           A. Yes, sir.

The Court: Is there any one here now who has any opinion as to the guilt or innocence of the defendant? Mr. Humphrey, did I understand you to say that you have an opinion from what you read?

Juror Humphrey: I believe I have.

Q. Do you believe that impression you obtained from reading newspaper accounts would remain with you throughout the trial? [11]

A. I would try to think it out but I don't know whether I would be able to or not.

The Court: Now I want to see if this would apply to you. Forget this case for the time being. Consider any case and there is an article appearing in the press that so and so had been indicted for such and such an offense. In your opinion he is guilty, is that the idea? In other words, just because a man is indicted and the newspapers publish some account of the charge, that causes you to form in your mind some feeling that you can not be a fair and impartial juror if you happened to be selected in that case—is that your situation?

A. No, I don't believe it is.

The Court: Then why would your feeling be such as you say it is in this case? What is the difference? You can understand how difficult it would be to obtain a fair juror in any case if the average citizen, upon reading an article in the paper that such and such a case was pending, came into court with a fixed opinion. We just couldn't obtain jurors, could we? Now what is there about this case

that makes it different from any other matter that you might read about?      A. Well——

The Court (Interceding): You don't know anything about the evidence in this case?      A. No.

Q. You don't know what to expect from any of the witnesses who [12] testify here, do you?

A. No, sir. The only way I can explain it, maybe that the occupation being gambling may have influence.

Q. Well, if you were selected as a juror, you would follow the instructions of the Court?

A. Yes, sir, I would.

Q. And you know when a man is charged with an offense, he is being tried only for the offense set forth in the indictment or information, that's all?

A. That's all, yes, sir.

Q. And just because something might appear during the course of this trial concerning some activity of the defendant, if it did occur, that did not seem just right to you, that wouldn't cause you or influence you in arriving at a verdict in this case, would it?      A. No.

Q. You would be instructed by the Court, as the jury would be, that they are to decide this case entirely upon the evidence brought into court and that the charge against the defendant is the only issue before the Court, and if you are a juror, you are going to be asked to determine one question—is this charge true? Now don't you believe that you could be a fair and impartial juror in this case if you were sworn as a juror?      A. Yes, sir, I do.

The Court: Now we have here the attorneys for

the [13] defendant and the attorneys for the government. We have Mr. John R. Golden and Mr. Leslie C. Gillen and Mr. Spurgeon Avakian. These gentlemen, I understand, are from San Francisco; and Mr. Lohse and Mr. Fry. I don't see Mr. Fry here today but Mr. Lohse and Mr. Fry are associated—these are the attorneys representing the defendant in this case. Have any of these gentlemen recently acted as attorneys at law for any of you? Have you consulted any of them recently on any business or professional or legal matters?

Now on the other side of the table we have Mr. Pike, United States attorney, and Mr. Shelton from San Francisco, Mr. Bruce Thompson, Assistant United States Attorney and in that office they have Mr. Kane and Mr. McDonald. Mr. McDonald is in court here, and we have in Las Vegas, as a member of the United States attorney's staff, Mr. William Compton. Now have any of these gentlemen recently acted as attorneys at law for any of you? Have any of you consulted any one of these gentlemen or any of them on any legal or professional matters?

Juror: I have had a little business with Mr. Lohse regarding an account. He wasn't actually representing us, just a party who was liquidating his business and Mr. Lohse was taking care of his——

The Court (Interceding): How long ago?

A. In the past two months.

Q. That wouldn't influence you one way or another? [14]

A. Not at all.

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The Court: Any ladies or gentlemen here who have had any business matters with any of these gentlemen representing the government?

Juror Smith: Some months ago I had occasion to consult with Mr. Fry, who is representing another party.

Q. Anything about that that would influence you one way or another? A. No, sir.

Juror Kofoed: In the field of insurance it is sometimes necessary to consult with an attorney and in the past year I have had occasion to consult with Mr. Lohse and Mr. Thompson, not directly in regard to fire of my own, but in regard to fire of my client.

The Court: Nothing about those conferences that would influence you one way or another?

A. No.

Mr. Lohse: At this time I thought your Honor was going to pursue the questioning of the prospective juror, J. W. Humphrey.

The Court: Just let me proceed here. Now I take it at the present time that we have no one in this jury box who has any idea or knowledge as to what the evidence in the case is going to be. We have no one in this jury box who has any opinion as to the guilt or innocence of this defendant. You have [15] heard some reference here to the indictment. The defendant has been indicted and you have heard Mr. Pike make some statements of the general nature of the indictment and of the charges contained in it. The indictment is merely the vehicle, the means, by which a person is brought into court

for trial. It is a complaint. It is a charge, and by virtue of it, the defendant is here in court for trial. It is not evidence of his guilt and it must not be considereed as evidence in any degree of his guilt. You have heard people say—there are some people who thoughtlessly have such a view of these things—you meet a friend of yours and you hear him say, “I hear so and so has been arrested,” or “So and so is on trial in court. Well, if he wasn’t guilty, he wouldn’t be there.” Now that is such an unfair thing and any person who has such an idea just throws out the window all at once all the principles and purposes of our government. In other words, if we are the kind of people who think a man is guilty because he is charged with an offense, we are worse than the people we are having trouble with today and in this country, and in every free country, no one is deemed to be guilty of an offense by merely having been charged and no one can be considered and found guilty of an offense until his guilt is proven beyond a reasonable doubt.

Now there are two great principles that go hand in hand and are the bulwark of our liberty. They are in effect everything we have got. A defendant is presumed to be innocent [16] unless and until his guilt is proven beyond a reasonable doubt. Without those principles we wouldn’t have any freedom whatever. So each of you must, and I am sure you will as American citizens, if you are selected as members of this jury, start out with the idea fixed

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in your mind that this defendant is innocent. That is the way you must approach this case and that idea must remain in your mind, unless and until the evidence in this case should convince you to the contrary beyond a reasonable doubt. Now that is the way we want this case tried and that is the way, I am sure, you, as good American citizens, would have it tried. So the defendant stands here in court indicted, that is true, but he is here as an innocent man and he must be considered and treated as innocent and he is innocent. This thing is a little more than a presumption, it is a substantial thing. The defendant is innocent, unless and until that event should occur, that he is proven guilty beyond a reasonable doubt.

Now what is a reasonable doubt? Our Nevada statute defines that term as concisely and as completely as any definition I have had had the opportunity to consider, in my own humble opinion. It is a rather difficult thing sometimes to understand, but the Nevada statute states: "A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the [17] entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable, must be actual and substantial, not mere possibility or speculation. The mind can not contain these two conditions at once. You can not have in your mind



a reasonable doubt and at the same time have an abiding conviction of the truth of the charge." So, if after hearing the evidence in this case and after considering it, you have in your mind an abiding conviction of the truth of the charge, your work has been completed and all you have to do is to vote for a verdict of guilty. Now keep in mind during the course of the trial those two things—that the defendant is presumed to be innocent, that he is innocent unless and until the evidence in the case, if it should—I don't know whether it will or not, I don't know anything about the evidence, any more than you know about it—keep in mind those two principles, the defendant stands here and is to be considered and treated at all times as innocent and is innocent, unless and until the evidence in the case should put into your mind an abiding conviction of the truth of the charge.

Now at the conclusion of the taking of the testimony, the Court will be called upon to instruct you as to the law of the case. You are going to be the judges of the facts of the case. The judge will be called upon to rule on whether or [18] not evidence is admissible when objections are made. He will be called upon to state to you the principles of law which he believes applicable to this case and to the evidence, after the evidence is in. Now we may have a situation like this—we may have, during the course of this trial—we have a lot of lawyers here—they may be popping up all over this room with objections. The Court may sustain some of them and overrule others, but don't let that influence you

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in any way. The attorneys for the defendant have a duty to perform here. The attorneys for the government likewise have a duty to perform and they perhaps will be zealous to see that nothing goes into the record or before the jury that shouldn't go in, from their point of view. That is, they may have ideas that certain offered evidence is not material, not legal evidence, and are going to object. Sometimes during the course of the trial the judge gets awfully tired of that and so does the jury, but don't be influenced by it. Remember they are doing their duty to their clients, whether it is the government or the defendant. We have to make allowances for that and not have any prejudice against either the government or the defendant on account of what may seem to us an annoying conduct, when it isn't intended to be at all.

Now the Court will have to take care of questions of law. The jury has to find the facts. There is going to be no interference by the judge with the jury in its province of deciding [19] the facts of the case, no expressions from the Court and if any should be made or any matter should be stated by the judge in the course of this trial, I want you to remember that there is no intent on the part of the Court to show his inclination one way or another or that he has any inclination towards either side. The judge is not going to have anything to do with these facts. Those are matters for you to decide. On the other hand, questions of law are for the judge. Now there might be some instruction given, or there might be a ruling that the Court has made here on an offer

of testimony and you might say, "Well, the judge was wrong in not letting that in," or "He shouldn't have let it in," one or another. You must not conjecture what might have been the effect of a ruling. Just take the rulings as they are given and let the thing go at that, and in the instructions there might be some principle stated in there that you might feel is not law at all, or if it is law, you might say to yourself, "Well, I don't like that kind of law. I won't follow it." You must not do that. You must follow the law as given you by the Court. There is a very plain reason for that and you will see how important it is that you accept without question the instructions of the Court. Now if the Court, in instructing the jury, should make a mistake—and that, of course, is possible—and one of the parties here, either the defendant or the government, was injured by that mistake, that party could take an appeal to a higher court. [20] There the matter could be corrected and remedied. If there was an error, the court could send it back to this court for a new trial so no harm would result from the judge's mistake as to the matter of law. But suppose a member of the jury refused to follow instructions and went on the idea that is not the law and if he should happen to make a mistake—and that might be possible—somebody would be hurt and there would be no way of remedying the injury, because there could be no appeal from that situation, so you see how important it is to follow the instructions of the Court.

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Now you have been informed that this case has something to do with income tax and we have all read in the papers recently a lot of things about income tax, but remember we are trying this case. We just have to keep our nose right into this case and have nothing to do with anything outside of it. Whether all this stuff you see about the Internal Revenue is true or isn't, has nothing to do with anything in this case. You must decide this case entirely upon its merits.

Jury duty is a great responsibility. It is perhaps the most important duty a citizen is called upon to perform off the firing line. To be called upon to judge important matters between fellow citizens' controversies is a great responsibility, a great responsibility to decide between the government and a citizen, where a person's liberty may be involved, but it has to be done. I am sure there is none of us enjoy doing it. I [21] don't believe there is any judge that enjoys it—I am sure there is no juror who does—but it is a duty that has to be done and there is only one way to do it, without fear, favor prejudice or sympathy, and when we do it that way, it isn't such a hard thing to do. It may not be pleasant to do, but it is not such a hard thing to do. All you have to do is to find out what the truth is. What is the truth? Is this charge true or isn't it true? If you believe, beyond a reasonable doubt, that it is true, find the defendant guilty. If you have not been convinced beyond a reasonable doubt that the defendant is guilty of the charge, or any one of the

charges in this indictment, it is your duty to find him not guilty. So if you will keep out of your minds outside matters, this will not be a difficult task for you, but if you are going to be influenced by sympathy or prejudice, it is going to be a miserable, difficult job and it is going to be a job that is going to leave its mark with you. You are going to be sworn to try this case and render a true verdict according to the evidence. You are going to be sworn to take a solemn oath before your God that you will do what is right, and the only way you can do what is right in this case is to follow the evidence and follow the law as given to you by the Court, unaffected or uninfluenced by sympathy on the one hand or prejudice on the other. It is your duty, Mr. Humphrey, to keep out of your mind any thought you might have about any gambling or any of the rest of you. Keep those things [22] out of your mind. It has nothing to do with this case at all. I mention you, not to point you out but because you had some little thought there. Just decide this case on the facts. Is this defendant guilty or not guilty of the charge contained in this indictment?

Now it is necessary in our country and in every State that the law be administered as equally as possible. We are all human and we find some variance in the administration of law throughout the country, but we are all straining towards perfection and we never get there, of course, to see that there is an equal distribution of justice, so here we do not want a situation like this—we want a jury's verdict based

upon the evidence alone and upon the law. Now if juries did not decide cases uninfluenced by outside matters, such as sympathy or prejudice, and if they went off on their own ideas, accepting what they thought was the law and it wasn't the law, you might find a situation like this—we in the northern end of the State have a defendant on trial or in Sacramento have another defendant on trial for the same thing, the same evidence. The jury down below finds him guilty and the jury here finds him not guilty, the same case and the same kind of evidence. What kind of a mess would that be and how unfair that would be. So in order to obtain as near as possible an equal and fair administration of justice, it is not hard to do, if you will decide the case entirely upon the evidence and keep out of your mind any suggestion [23] of sympathy or prejudice. Now we are all sorry for anyone who is accused of an offense. We are all sorry for him and many times those who are found guilty of offenses don't suffer nearly as much as their relatives or mothers or fathers or wives or parents. Those are matters that come up in every criminal trial, and this is a criminal trial, but we can't act on a thing of that kind. For instance, look at the situation we would have there. Some fellow who didn't have a friend in the world is up for a crime, convicted in five minutes and some fellow who has a mother, who suffers worse than he does, is turned loose. You can't consider those things. Stay away from any evidence of sympathy or prejudice. Now that might come into your mind, if the evidence disclosed some things—

I don't know whether it will or what it will—about gambling. We are here to find out if this charge is true and we must not be prejudiced against this defendant because of anything else that might appear in this case except this charge.

Any further suggestions?

Mr. Lohse: May we have a moment?

Mr. Thompson: We have a question. We would like to have the Court inquire whether any juror now in the box is acquainted with the defendant, Elmer F. Remmer.

The Court: Yes, I forgot to do that. Are any of the jurors acquainted with the defendant?

Juror Golden: I do.

The Court: You have known him for how long a time? [24]      A. About 20 years, I guess.

The Court: Any one else that knows him? Now the fact you have been acquainted with him for a long time, would that make it difficult for you to act as a juror in this case?

A. Your Honor, I met him in a business way over a period of 15 or 20 years. I would rather not serve. It wouldn't affect my judgment at all.

Q. Not one way or another? At present you have no opinion one way or another?

A. None whatsoever.

Q. And you would follow the evidence in the case?      A. I would.

Q. And if the evidence convinces you beyond a reasonable doubt that the charge was true, you would vote for a verdict of guilty?      A. Yes.

Q. And the fact you know Mr. Remmer wouldn't



make any difference if the evidence convinced you beyond a reasonable doubt. A. It would not.

Q. And your acquaintance in this case wouldn't prejudice you in any way against him, would it?

A. No.

The Court: Very well. Any further questions?

Mr. Lohse: Would your Honor please inquire whether any of the jurors know Walter M. Campbell?

The Court: Are any of you ladies or gentlemen acquainted [25] with Mr. Campbell? He is connected with the United States attorney's office and with this case. Do any of you know him? He is not present in the court room.

Mr. Lohse: Or Mr. Brady, an accountant in similar employment, and Mr. Weaver?

The Court: I am not going to ask that. I am just going to ask these prospective jurors if they have any idea as to the evidence that is going to be introduced in this case. I am going to ask the jurors one question. I did not think it was necessary. We are all citizens of this country and I do not think there is a man here or a woman who does not believe in the principles we have been talking about, who does not believe, that the defendant should be, and is, considered innocent until he is proven guilty beyond a reasonable doubt. I do not believe there is a single man or woman here who would not require the government to prove its case beyond a reasonable doubt and if it proved it, I do not believe there is a person here who would not vote for a verdict of guilty and I do not believe



there is a person here that would believe anybody's testimony just because he happens to know him, than anybody else because he comes in here and testified, and I do not believe there is any member on this jury that knows anybody that has to do with the preparation of this case in any way, shape, manner or form. Have you any acquaintance with any of the tax officials in San Francisco or in Los Angeles or any of the tax attorneys of the [26] United States. I think that will cover it. Any further questions.

Mr. Gillen: I think not, your Honor.

The Court: Any challenge for cause?

Mr. Lohse: Your Honor please, at this time we will challenge the juror Humphrey for cause. If the Court please, Mr. Humphrey expressed the opinion that he was prejudiced against gamblers particularly.

The Court: I did not hear him say so.

Mr. Lohse: I believe he did.

The Court: You did not make any such statement?

Juror Humphrey: Not at all.

Mr. Lohse: I understood so; perhaps it is erroneous.

The Court: Well, he did not.

Mr. Lohse: I thought he expressed an opinion he would not be able to fairly judge the defendant because——

Mr. Humphrey: I said I might, because of the occupation——

The Court (Interceding): You have heard what

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we tried to explain about duties of jurors. You would not find a man guilty unless you believed him guilty beyond a reasonable doubt?

Mr. Humphrey: I would not.

The Court: And you wouldn't find him guilty of the offense charged because he worked some place you didn't think [27] a good place to work?

Mr. Humphrey: No.

The Court: The challenge is denied.

Mr. Lohse: We note an exception, your Honor.

The Court: Yes. Any other challenges? Government's first peremptory challenge.

Mr. Pike: The government will excuse Mr. Golden.

(Walter J. Herz drawn and sworn.)

The Court: You have heard the discussion we have had this morning. Has anything you have heard suggested to you any reason why you could not be a fair and impartial juror if sworn to try this case? A. No, sir.

Q. Have you any idea as to what the evidence in this case is going to be? A. No, sir.

Q. Have you ever talked with any one about the case who pretended to know what the evidence was? A. No.

Q. Are you acquainted with the defendant?

A. No.

Q. And these attorneys, whose names we mentioned here, these gentlemen representing the government and the defense, have any of them acted as your attorneys recently? A. No, sir. [28]

Q. Have you consulted any of them on any

business or professional matter?      A. No.

Q. At the present time you have no opinion as to the guilt or innocence of the defendant?

A. No, sir.

Q. And you believe in the principle no one is to be found guilty unless proven guilty beyond a reasonable doubt?      A. Yes, sir.

Q. And the defendant is presumed to be innocent at all times until that event occurs, if it does occur, that the evidence convinces you beyond a reasonable doubt to the contrary?      A. Yes, sir.

Q. And the indictment itself is not evidence against the defendant?      A. No, sir.

The Court: Any challenges for cause?

No challenge.

The Court: Defendant's first peremptory challenge.

Mr. Lohse: Excuse Mrs. Wittwer.

(John J. Lynch called and sworn.)

The Court: You have heard the discussion here this morning. Has anything you have heard suggested to you any reason why you could not be a fair and impartial juror if sworn to try this case? [29]

A. No, sir?

The Court: I am sure every other individual here in this jury box would be fair and impartial if selected as a juror to try this case. You believe in the principles we have been talking about?

A. Yes, sir.

Q. Do you know Mr. Remmer, the defendant?

A. No, sir.

Q. Have you discussed this case with any one?

A. No.

Q. Do you know anything more about this case than you have heard in court? A. No.

Q. Have you any opinion one way or another as to the guilt or innocence of the defendant?

A. No, sir.

The Court: Any further questions suggested? No questions.

The Court: Any challenges for cause? No challenges.

The Court: Defendant's 2nd peremptory.

Mr. Lohse: Excuse Mr. Kofoed.

(Vernon Ennor called and sworn.)

The Court: You have heard the discussion we have had here. Anything you have heard today that would cause you to [30] feel that you could not be a fair and impartial juror? A. No, sir.

Q. If selected, you would be fair on both sides and would not convict the defendant unless you believed him guilty beyond a reasonable doubt, but if you did believe that beyond a reasonable doubt, after considering the evidence, you would vote for a verdict of guilty? A. Yes, sir.

Q. Do you know the defendant?

A. No, sir.

Q. Have you talked to anybody about this case who claimed to know any of the evidence?

A. No, sir.

Q. Do you know any of the evidence that might be introduced here? A. No, sir.

Q. You have no knowledge of this case?

A. No, sir.

Q. Have you formed or expressed any opinion one way or another.

A. No, sir.

Q. Your mind is open at this time and you know of no reason why you could not be a fair and impartial juror?

A. I know of no reason.

The Court: Any other questions?

No questions.

The Court: Any challenges for cause?

No challenges. [31]

The Court: Government's 2nd peremptory challenge.

Mr. Pike: The government will excuse Mr. Colletti.

(Walter E. Parsons drawn and sworn.)

The Court: Have you ever heard of the case before?

A. Only in the newspaper.

Q. You have heard the discussion we have had?

A. Yes, sir.

Q. Has anything you have heard suggested to you any reason why you could not be a fair and impartial juror if sworn to try this case?

A. No.

Q. Have you formed or expressed any opinion as to the guilt or innocence of the defendant?

A. No.

Q. Your mind is open at this time?

A. Yes, sir.

Q. You have no idea what to expect in the way of evidence here at all?

A. No, sir.

Q. You believe that the defendant is presumed to be innocent unless proven guilty beyond a reasonable doubt? A. That's right.

Q. And you would consider the defendant innocent and would vote for a verdict of not guilty if the government did not convince you beyond a reasonable doubt that he was guilty?

A. Yes, sir.

Q. And if the government convinced you beyond a reasonable [32] doubt by the evidence, and the evidence only, that the defendant is guilty, you would so decide the case? A. Yes, sir.

Q. And your decision in this case would be unaffected by any outside influence of prejudice on the one hand or sympathy on the other?

A. Yes, sir.

Q. You would try the defendant only for the offenses charged in the indictment and for no other matters that might appear during the trial?

A. Yes, sir. I would like to state that I know Mr. Fry.

Q. I forgot to ask you those questions. Any of these attorneys acting as attorneys for you?

A. Well, Mr. Pike has from a business standpoint and I am personally acquainted with Mr. Fry.

Q. Are your relations with Mr. Fry and Mr. Pike about the same? Is Mr. Pike acting as your attorney? A. Not as my personal attorney.

Q. Is he acting as attorney for some business matter or institution with which you are connected?

A. Which I was connected with.

Q. How long ago?

A. About a year or so.

Q. At the present time there is no relation of attorney and client between you and Mr. Pike? [33]

A. Not at the present time.

The Court: Any further questions?

Mr. Golden: May we ask if he has ever served before as a juror?

The Court: I don't think so.

Mr. Golden: May we ask Mr. Parsons if he ever sat on a court martial of the United States army?

The Court: I won't ask that either. I can't see what difference that makes at all.

Mr. Golden: I wanted to ask your Honor just now whether it is necessary to note an exception to the refusal?

The Court: You can have an exception to all rulings of the court.

Mr. Golden: May we ask for whom Mr. Parsons conducts investigations?

The Court: I am not going into Mr. Parsons business affairs.

Mr. Golden: We want to know if he works for any of these people.

The Court: Are you working for Mr. Pike or the government?

Mr. Parsons: No, sir.

Mr. Golden: Has the gentleman ever worked for any of these gentlemen?

The Court: Have you done investigating work for the [34] government?

A. Yes, sir.

Q. How long ago?

A. The last case was about a year ago.

Mr. Pike: I would like to have the Court ask if I had anything to do with that investigation, or the United States attorney's office?

The Court: Did the United States attorney's office have anything to do with it?

A. Only if the court—it was turned over to the court.

Q. What department of the government was that made for?

A. At that time I was connected with the Nevada State Police and dealt with the traffic.

The Court: Any further questions?

Mr. Golden: I would like to ask Mr. Parsons whether his investigating work is solely for federal and State or also private investigating.

The Court: I will not go into his business or ask it.

Mr. Golden: I would like to ask whether his employment with the government, and particularly the case to which he referred about a year ago, would affect his deliberations in this case?

The Court: Did you have any investigating work in regard to the defendant here?

A. No, sir. [35]

Mr. Golden: I would like to ask the prospective juror, your Honor, whether his investigating work, and/or his contact, whatever it may have been we don't know, with Mr. Pike about a year ago would make it more likely that he would believe the government's side of this case or would have more confidence in the prosecution than in the defense.



The Court: I will ask you this question, Mr. Parsons. The fact you have engaged in work for the government, would it influence you one way or another in your decision in this case, if you were instructed by the Court that you should decide this case according to the evidence in this case and the evidence alone? Would the fact of your former employment get you off that track and cause you to go on something else in this case?

A. It would be definitely the evidence and instructions of the Court.

Mr. Golden: I would like to ask him whether or not he is hopeful or expectant in the future of further investigating work from the government.

The Court: I will not ask that question.

Mr. Golden: We note exceptions to all rulings.

The Court: Any further questions?

No questions.

The Court: Any challenges for cause?

Mr. Golden: We challenge Mr. Parsons for cause.

The Court: The challenge will be denied. [36] Defendant's 3rd peremptory challenge.

Mr. Golden: The defense will excuse Mr. Parsons.

(A. W. Ringlee called and sworn.)

The Court: You have heard the discussion here this morning? A. Yes, sir.

Q. Has anything you have heard suggested to you any reason why you could not be a fair and impartial juror if sworn to try the case?

A. No, sir.

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Q. Are you acquainted with the defendant?

A. No, sir.

Q. Have you talked with any one who claimed to know the facts?      A. No, sir.

Q. Have you any opinion one way or another as to the guilt or innocence of the defendant?

A. No, sir.

Q. You understand and heard said many times, not only here but other places—you know as a matter of your education as an American citizen—a defendant is presumed to be innocent unless and until the evidence in the case should convince a member of the jury beyond a reasonable doubt of the contrary? Is that true?      A. Yes, sir.

Q. You would follow that in this case? [37]

A. Yes, sir.

Q. You understand this indictment is merely the means by which this trial is initiated or started?

A. Yes, sir.

Q. You would try this defendant only for the offense charged in this indictment?

A. Yes, sir.

Q. Now we must keep our minds free of prejudice and sympathy. In other words, as I have tried to explain—I won't take the time to do it again—it is necessary for an equal and fair administration of justice that courts and juries decide cases only upon the evidence before it, legally admitted before it. You would do that in this case, wouldn't you, and decide the case according to the evidence and not outside influence of prejudice on the one hand or sympathy on the other, and stay with the charge

contained in the indictment and not act on anything else? A. Yes, sir.

The Court: Any further questions?

No questions.

The Court: Any challenge for cause?

No challenge.

The Court: Defendant's 4th peremptory challenge.

Mr. Lohse: Excuse Mr. Herz.

(Fred Kolster drawn and sworn.) [38]

The Court: You have heard the discussion here today, have you not? A. Yes, sir.

Q. Have you discussed this case with any one?

A. No, sir.

Q. Have you any idea or expectation as to what the evidence in this case is going to be? You don't know what it is going to be, do you?

A. No, sir.

Q. Have you any opinion one way or another as to the guilt or innocence of this charge?

A. No, sir.

Q. You have heard everything that has taken place today? A. Yes, sir.

Q. You believe in the principles we have been trying to explain? A. Yes, sir.

Q. Do you know of any reason why you could not be fair, both to the defendant and to the government, if you are selected as a juror in this case?

A. No, sir.

Q. That is what you would try to be?

A. Yes, sir.

The Court: Any further questions?

Mr. Thompson: None, your Honor.

Mr. Golden: Your Honor may have asked this question, [39] but I wanted to know if the gentleman knew any of the attorneys.

The Court: Do you know Mr. Pike?

A. Yes, I know Mr. Pike.

Q. Have any of these gentlemen, whose names I mentioned as attorneys for the government, acted as attorneys at law for you recently?

A. Never.

Q. So at the present time you have never consulted any of these attorneys on any business or legal matters? A. No, sir.

Q. Are you acquainted with the defendant?

A. No, sir.

Mr. Golden: I would like to know whether the gentleman's acquaintance with Mr. Pike is of a social nature?

The Court: Have you a very close social relationship with Mr. Pike? A. No, sir.

Q. You don't see him often? Just casually when he happens to be here in Carson City?

A. Yes, sir.

Q. And you don't converse with him every time you see him either, do you? A. No.

Mr. Golden: I respect the gentleman's judgment, but I am not quite clear how he knows him. Is it socially or through— [40]

The Court: Well, we are in a small State, so I think most every one in the State knows some of us and just because we know people, we do not do everything that they tell us to do either.

Mr. Golden: That is the first comforting thing I have heard. I might explain——

The Court (Interceding): Is there anything about your relationship with Mr. Pike that would influence in one way or another in this case?

A. No.

The Court: Any further questions?

No questions.

The Court: Any challenge for cause?

No challenge for cause.

The Court: Government's 3rd peremptory challenge.

Mr. Pike: The government will excuse Mrs. Sanford.

The Court: We will take a recess now. I want you all to listen to this admonition. It is very important. We do not know who is going to constitute this jury yet. It is very likely that some of you ladies and gentlemen in this box will be members of the jury. Some of you in the audience may be members of the jury. You must not discuss among yourselves, or with any one else, any matter connected with this case or form or express an opinion as to this case unless and until you should be selected as jurors, and then only after the case [41] has been submitted to you. Now do not permit any one to talk to you about the case. I do not have any idea that any one would attempt to do so, but if any one should—sometimes some curious individual attempts to talk the case over with members of the jury or any one who might be on the jury—now don't allow any one to talk to any of you about this

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case and if any one should persist in talking to you about the case after you have informed them that you are a member of the venire, you report that individual to the Court.

(Recess taken at 11:45.)

1:30 P.M.

The Court: Let the record show the presence of the defendant with counsel.

Two gentlemen now in the jury box spoke to me during the recess. Mr. Dickson, will you please state your situation?

Mr. Dickson: I work in the Wild Life and put out bait and it is important to get it out in the winter time, so I would like to be excused.

The Court: There is no one else can do it?

A. There are only 13 trappers in the State.

Q. Where is your district?

A. From Wellington to Tonopah and Ely.

Q. No one working in there now? A. No.

Q. And you are engaged in that work at the present time? [42]

A. Yes, sir.

Q. And you are a government employee. Well, I will excuse you, Mr. Dickson. Then there is Mr. Espassen. What is your employment?

Mr. Espassen: Well, I have a one-man business and I will have to close the place up for the duration of this trial.

The Court: You will be excused then. The clerk will call three names.

(W. F. Carter, Louis C. Delamonica, and John Perri called and sworn.)

The Court: You have heard the statements made here this morning, have you not? Do you know anything about this case, any of you three gentlemen?

A. No.

Q. Have you ever heard anything about the case before you came into court this morning?

A. No.

Q. Are you acquainted with the defendant, Mr. Remmer? A. No.

Q. The attorneys here, Mr. Pike, Mr. Thompson, and Mr. McDonald, they are Nevada attorneys here. I take it you are not acquainted with the gentlemen who are from out of the State, and then there is Mr. Lohse and Mr. Fry—are any of these attorneys acting as lawyers for you now?

A. No. [43]

Q. Have any of them recently? A. No.

Q. Have you talked with any of them on any business or legal matters? A. No.

Q. Now I have tried to point out this morning that the defendant here is charged with the matters set forth in the indictment and that is all we are concerned with, is the charge here in this indictment. This indictment is not evidence in the case. It is merely the means by which the trial is brought on, the means by which the defendant is here before the court for trial, and at the beginning of the trial, and all through the trial, he is to be considered as an innocent man and he is so to be consid-



ered as innocent unless the evidence that you would hear from this witness stand would convince you to the contrary beyond a reasonable doubt, and if, after hearing this evidence, you have in your minds an abiding conviction that the charge is true, then you should vote for a verdict of guilty. In other words, if that condition of your mind should result from the evidence, there is in your mind then no room for a reasonable doubt as to the guilt of the defendant. The presumption of innocence then no longer applies and the verdict should be guilty. Now on the other hand if, after hearing this evidence, you are not satisfied beyond a reasonable doubt, if, after hearing this evidence, you do not have in your minds a conviction, [44] abiding conviction, that the charge is true, then you should vote for a verdict of not guilty. In other words, it means just this—that it is the burden of the government to prove this case against this defendant beyond a reasonable doubt and if they fail to do that, then you should vote for a verdict of not guilty, and the case should be decided without any outside influence, be decided entirely upon the evidence brought into this court room, that you are not to be influenced by any feeling of prejudice. If anything like that should occur during the course of the trial, you must drive it out of your minds and decide the case entirely upon the evidence here and you are to decide this case without being influenced by any feeling of sympathy. We have to find out what the truth is and we must do that without being influenced by anything but the evidence. Now



do you know of any reason why you could not be a fair and impartial juror, any of you, if you are selected to try this case?      A. No.

Q. And if you were selected to try this case, you would decide this case entirely upon the evidence, wouldn't you?      A. Yes.

Q. I am in the same position you are. I have no idea or knowledge of what the evidence in this case is to be. It doesn't make any difference how we feel towards any kind of business or occupation and if it should occur during this trial, or the [44a] evidence in this trial should point to certain things concerning this defendant or any of his activities that we might not like, we must remember that we are not concerned with any questions concerning those things. We are concerned only with the case set forth in this indictment. Now I do not know as anything like that will appear here, but if it does, our duty would be, under our oath, to leave that out of our deliberations and consideration. Now some of us might have a prejudice against gambling; some of us might have a prejudice against gambling that might be conducted in a State where gambling is prohibited by law. If it should appear by this evidence that this defendant has engaged in such activities, those activities have nothing whatever to do with this case, so far as arriving at your verdict is concerned.

Now is there any member of the jury—assume, just for the sake of consideration here that such events might appear in this evidence, and you will be instructed by the Court to decide the case upon

the evidence alone—is there any one here who would feel they could not do that and would be influenced by any such outside activities? Is there any one here who would be influenced or tempted to decide the case against the defendant if any such conditions appear here? I take it that none of you would and it is right that you should not. You must keep in mind at all times that we are here just to try the issues set forth in this indictment. The defendant is either [45] guilty or not guilty. The charge is either true or not true, and the jury will have the duty of coming to that decision.

The Court: Any further questions that you would like to suggest to the Court?

Mr. Thompson: We would like to inquire by whom Mr. Carter is employed.

The Court: Mr. Carter, whom are you employed by?

A. No one at present. I do a little contracting work.

The Court: Any further questions suggested?  
No questions.

The Court: Now is there any challenge for cause?

Mr. Golden: Of those three, your Honor?

The Court: Well, I want to explain that now. When you are considering your peremptory challenges, you are not bound as to any in the box whom you have passed. You are at liberty to exercise all your peremptory challenges to any person in the box at any time. Now any challenge for cause?

Mr. Golden: Not as to the last three occupants of the box, your Honor.

The Court: I want to ask another question of all of you. This is addressed to every one. Is there any one here in this jury box at this time who has an opinion one way or another as to the guilt of this defendant, as to the truth or untruth of this charge?

None. [46]

The Court: Any challenge for cause?

No challenge.

The Court: Defendant's 5th peremptory challenge.

Mr. Lohse: Excuse Vernon Ennor.

(Darwin K. Ellis drawn and sworn.)

The Court: Have you ever heard of this case before you came into court room this morning?

A. Only what I read in the papers.

Q. You understand the indictment here is not evidence in the case?

A. I understand.

Q. It is merely the means of bringing the case to trial. You heard the statement Mr. Pike made this morning?

A. Yes.

Q. Did you gain any information from reading in the newspapers anything in addition to what you heard Mr. Pike say this morning?

A. Nothing that would influence me one way or the other.

Q. At the present time you know of no reason why you could not be a fair and impartial juror?

A. I know of no reason.

Q. At the beginning of the trial, and throughout

the trial, the defendant is presumed to be innocent, you understand that?      A. I understand.

Q. And that presumption remains with the defendant unless and [47] until, if the event should occur, that the evidence in the case should convince you beyond a reasonable doubt that he was guilty, you understand that?      A. Yes, sir.

Q. You understand if the evidence is such that you have in your mind an abiding conviction that the charge is true, then there is no room in your mind for a reasonable doubt, and in that event the verdict should be guilty. The burden of proof is upon the government to prove its case beyond a reasonable doubt. At the present time if you were selected as a juror, you would enter upon the case with an open mind, would you not?

A. Yes, sir.

Q. And it would be your purpose to be fair and impartial to both the government and the defendant? You would be fair to the government and to the defendant?      A. Yes, sir.

Q. Now the defendant should not be convicted unless the evidence in the case should convince the jury that he is guilty beyond a reasonable doubt. On the other hand, if the evidence should convince the juror beyond a reasonable doubt that the defendant is guilty, the verdict, under the juror's oath, should be guilty. The laws of our government must be upheld and they must be upheld in every particular, regardless of whether you like this or that law, and you would be governed by those ideas if you were selected as a juror in this case? [48]

A. Yes, sir.

The Court: Any challenge for cause?

Mr. Pike: No challenge. I am not sure if the Court inquired about the relation of attorneys.

The Court: I will do that. Are you acquainted with the defendant? A. No.

Q. Are you acquainted with the attorneys here? Now we have Mr. Golden, Mr. Gillen and Mr. Avakian of San Francisco, representing the defendant, with Mr. Lohse of the firm of Lohse and Fry. Are any of these gentlemen at present acting as attorneys at law for you? A. No, sir.

Q. On the other side, we have Mr. Pike, Mr. Thompson, Mr. McDonald and Mr. Kane as members of the United States attorney's office in Reno, Mr. Compton as a member of the United States attorney's office in Las Vegas and Mr. Walter Campbell of San Francisco is attorney in regard to tax matters and he may or may not appear here in this case later. Have any of these gentlemen acted as attorneys at law for you? A. No, sir.

Q. And you told me you were not acquainted with the defendant and you have no opinion as to the case. Any further questions?

Mr. Gillen: I suppose some jurors know Mr. Lohse as the [49] Reno attorney?

Mr. Pike: I think that was stated repeatedly.

Mr. Gillen: I have not heard it stated at all.

The Court: Mr. Lohse is a member of the Nevada Bar and the rest are from San Francisco.

Mr. Pike: I may be in error, but I am not defi-

nite whether or not some questions with reference to attorneys——

The Court: I will ask every one on the jury. You have heard the names just mentioned of different attorneys. Are any of those gentlemen now acting as attorneys at all for any person in the jury box, and one gentleman told me some time back Mr. Lohse had. Any one else in this jury box who has any business affairs now in the hands of, or pending before, any of these attorneys mentioned on either side, and is there any one here in this jury box who is acquainted with the defendant? Any further questions?

Mr. Gillen: No questions.

The Court: Any challenge for cause?

Mr. Gillen: No challenge for cause.

The Court: Defendant's 4th peremptory challenge.

Mr. Pike: Excuse Mr. Perri.

(James H. Hardy, Jr. called and sworn.)

The Court: Are you acquainted with the defendant in this case, Mr. Remmer?

A. No, I am not. [50]

Q. And you perhaps are acquainted with some of the attorneys for the government, Mr. Pike, Mr. Thompson, Mr. McDonald, Mr. Kane, Mr. Compton?

A. No.

Q. Are you acquainted with any of the attorneys for the defendant? You have probably heard the names mentioned a little while ago, the three gentlemen from San Francisco and two from Reno, Mr.

Lohse and Mr. Fry. Are you acquainted with any of those gentlemen? A. No.

Q. You heard the discussion here in the courtroom today. Have you anything in mind that would cause you to believe that you could not be a fair and impartial juror if selected to try this case?

A. No.

Q. You believe generally in the principles that we have been speaking of? A. Yes.

Q. You would be guided entirely upon the evidence? No outside influence of any nature, prejudice against the defendant or against the government, or sympathy for one or the other would have any weight with you at all in deciding this case?

A. No.

The Court: Any other questions.

Mr. Golden: May we inquire—this gentleman lives in [51] Sparks and he is a driver?

A. Yes, sir.

Mr. Golden: May we inquire for whom he drives? A. Reno Bus Lines.

The Court: Street transportation.

Mr. Golden: I would like to know if the gentleman has read about this case and formed any opinion concerning it.

The Court: Have you any opinion as to this case one way or another? A. No, I have not.

Q. You have heard about it before?

A. Just what I have read in the papers.

Q. And you understand that the defendant is presumed to be innocent and that presumption remains with him all during the trial, unless the evi-



dence in the case should convince you beyond a reasonable doubt to the contrary, you understand that?      A. Yes.

Q. Now could you, if you are selected as a juror, enter upon this case with an open and free mind, without any opinion one way or another?

A. Yes.

Q. So the matters you have read in the paper haven't left any opinion with you, have they?

A. No.

The Court: Any other questions? [52]

No questions.

The Court: Any challenge for cause?

No challenge.

The Court: Defendant's 6th peremptory.

I want to say to members of the panel, in questioning some of the new arrivals that came into this venire, if anything in any question or discussion suggests anything to you which might cause you to believe there would be some obstacle in your purpose to be a fair and impartial juror, please don't hesitate to so state. Defendant's 6th peremptory.

Mr. Golden: The defense will excuse Mr. Hardy.

(Donald Anderson drawn and sworn.)

The Court: You have heard everything that has taken place here?      A. Yes sir.

Q. Do you know of any reason why you could not be a fair and impartial juror if selected to try this case?      A. No.

Q. Are you acquainted with any attorneys you heard mentioned here, Mr. Pike, Mr. Thompson, Mr. McDonald—



A. Yes, I know him.

Q. Have any of these gentlemen acted as attorney at law for you?      A. No, sir.

Q. And Mr. Lohse and Mr. Fry are Reno attorneys, the other [53] gentlemen are all from San Francisco, representing the defendant. None of those gentlemen have acted in any way for you?

A. No.

Q. The fact you might be acquainted with some attorneys for the government would not influence you in any way?      A. No, sir.

Q. I think you understand the matters I have gone over, you have heard them?      A. Yes, sir.

Q. And you believe in those principles?

A. Yes, sir.

Q. And if you were selected as a juror, it would be your purpose to be fair to both the government and the defendant?      A. Right.

Q. And you know the verdict, in order to be an honest one, must be based entirely upon the evidence?      A. Right.

Q. And we all want to be honest, don't we?

A. Yes.

Q. Are you acquainted with the defendant?

A. No.

Q. And you have no opinion as to the case at all?      A. No.

Mr. Golden: Your Honor explained once before with another gentlemen. I would like to know how he knows Mr. Pike, [54] whether socially or in his office?

Mr. Pike: It was Mr. McDonald.

The Court: Did you see Mr. McDonald very often? A. I did when I worked in town.

Q. You would see him around town?

A. Yes.

Q. Just like any one? A. Yes.

Q. Mr. McDonald was stationed in the Attorney General's office here. You would see him here quite often? A. Yes.

The Court: Any other questions?

No questions.

The Court: Any challenge for cause?

Mr. Golden: No, your Honor.

Mr. Pike: No challenge for cause.

The Court: Defendant's 7th peremptory challenge.

Mr. Gillen: I feel we have reached the point our next action will depend upon the legal matter taken up with your Honor and we are going to ask if your Honor would at this time take a brief recess and consider that matter. It may facilitate further action of the case.

The Court: I can't see why we should, Mr. Gillen. I am going to ask a few more questions. I tried to cover it here a little while ago, the same thing. [55]

Now we want on this jury people who will be fair, people who will be fair to the defendant and fair to the government. We do not want any one on this jury who is going into the case with a fixed opinion. We expect the decision of this case will be based on something that the jury doesn't know anything at all about now, it will be based upon the

evidence coming from the witnesses and from the documents that are introduced here in evidence, so at the outset of the trial each juror should have an open mind on this case. If the case was submitted to the jury right now, there is only one verdict that could be rendered and that would be not guilty, because the defendant is presumed to be innocent until his guilt is established beyond a reasonable doubt by the evidence, and you have heard no evidence and I pointed out a little while ago that there might be matters coming into this case as to the activities of the defendant which some of you might not approve of, or you might, I don't know. I don't know what they are. Even if something should come into this case as to the activities of the defendant that you might not do yourself if you were in his position or wouldn't approve of them, remember that those matters having nothing whatever to do with the case. Now if anything like that should happen, any testimony of that kind should come into the case, is there any member of this jury who, for that reason and on that basis, would be influenced against this defendant to the extent that it would cloud or interfere with the juror's purpose to be fair and decide the case entirely [56] upon the evidence that comes into court. That is rather involved and probably difficult to understand, the way I so clumsily expressed it, but what I am trying to get at is, no matter what happens or appears here, this defendant should not be found guilty unless the evidence proves that he is guilty of the material

facts charged in the indictment. Is there any one here at this time who has that feeling, he could not decide on that basis and decide the case entirely on the basis of the evidence on the charge in this case?

The defendant has exercised six peremptory challenges and has four remaining. The government has exercised four of its challenges and has two remaining. Defendant's next peremptory challenge.

Mr. Gillen: My motion, I made inquiry, your Honor, as respecting the juror, has been denied?

The Court: I did not consider it as a motion.

Mr. Gillen: I intended it as a motion and may it be considered as a motion?

The Court: I will, and I will permit you to renew the challenge. I understand your motion was motion to renew the challenge?

Mr. Gillen: That is correct.

The Court: I will grant the motion. Now you will renew the challenge.

Mr. Gillen: Then, may it please the Court, I challenge [57] Mr. Humphrey for cause.

The Court: You traverse?

Mr. Pike: That is correct.

The Court: What is the cause?

Mr. Gillen: Some expressions Mr. Humphrey made in the course of examination by your Honor. It is my recollection Mr. Humphrey stated—and it is no reflection on Mr. Humphrey, we appreciate Mr. Humphrey's frankness and truthfulness in expressing his state of mind to your Honor; it was a very fair thing for him to do and I hope my challenge does not in any wise make Mr. Humphrey feel he should be embarrassed by it. We are simply

trying to get a jury that has no fixed opinion in mind about the matter and we are all human and can't help develop opinions in our minds from things we read about here. Now it is my recollection, may it please the Court, and I believe the record will bear me out, that Mr. Humphrey first said he read about this matter in the newspaper and as a result of such reading he had formed an opinion in his mind, and it is my recollection that subsequently he said it would be difficult for him to remove that opinion from his mind, and it is my recollection further, and I am ready to be corrected or either have him confirm it or otherwise by the record, that he also said he would have some fear there would be some deterrent effect—I am not quoting verbatim—because it would come to his attention that the defendant was engaged in [58] activities involving gambling, which in my humble opinion, and the opinion of my associates, means that first of all the gentleman did form an opinion here on more than evidence that came into his purview by reason of the newspaper account—and I might say we all know newspaper accounts are not accurate.

The Court: That is your challenge?

Mr. Gillen: Yes.

The Court: Let us find out. Mr. Humphrey, at this time, from any source whatever have you an opinion as to the guilt or innocence of this defendant?

Mr. Humphrey: No, sir, I have not, as to his guilt or innocence.

Q. Do you know of any reason, Mr. Humphrey, why you could not, if you are selected as a juror in this case, decide the case entirely upon the evidence that would be brought into court here?

A. No; the things told me and heard this morning, and in giving all these things consideration, I feel that I would be fair and would consider everything as to the evidence and make my decision in accordance with the evidence put before me.

Q. Now if evidence should appear here of gambling activities—the charge that we have here is set forth in this indictment, that is what the defendant is being charged with and you are to decide the case entirely upon the evidence, and you [59] understand that? A. Yes.

Q. Now take those two propositions together, that the defendant is charged with certain specific offenses in this indictment and that we are to decide the case entirely upon the evidence and that there may or may not be some evidence here of gambling activities, have you such a feeling that if there was evidence of some gambling activities that might have occurred in a State where gambling is not legal, could you decide the case without consideration of those matters?

A. Yes, sir, I believe I could.

Q. You would decide the case entirely upon the evidence here, without regard to those matters of gambling? A. Yes, sir, I believe I could.

The Court: The challenge is denied.

Mr. Gillen: May I propose two other questions?

The Court: Yes.

Mr. Gillen: One question I would like to pro-

pose, the question respecting that your Honor ask this gentleman what he meant when he said he had formed an opinion from what he read, and also what he meant when he said he would be affected by the fact when he heard the defendant had been engaged in gambling activities.

The Court: I am not concerned with that. I am concerned only with his present state of mind, that is all. I [60] will not ask that.

Mr. Gillen: My last question was intended to develop this, what did he mean by reference to gambling activities, that it would be more difficult to presume innocence of the defendant who had been in the gambling business than a defendant who had been in some other line of business?

The Court: I am only interested in his present state of mind and I think I have covered the ground very fully and what he meant by some expression he made here a short time ago, I do not think we are concerned with.

Mr. Gillen: That is the only way we get at a person's state of mind.

The Court: We asked him now what he means. I am not going over it again and I think it is clear here that this juror would decide the case entirely upon the evidence.

Mr. Gillen: If your Honor knows what he meant, I certainly do not and neither do my associates.

The Court: Sometimes a person gets an impression when he reads something in the paper.

Mr. Gillen: That is true.



The Court: And it may at the time have some influence with him.

Mr. Gillen: That's true.

The Court: And we know, I think, as a matter of law, that opinions formed from newspaper articles and ordinary [61] rumor are not of the character that will stand a challenge for cause.

Mr. Gillen: If they remain, they have.

The Court: Have you any opinion now—I asked the question a little while ago and I will ask you again—have you an opinion from any source whatever now as to the guilt or innocence of this defendant? A. No, sir.

Q. And at the time you read those newspaper articles, did you form an opinion as to the guilt or innocence of the defendant?

A. Not as to the guilt or innocence, no.

Mr. Gillen: As to what then?

The Court: We are not concerned with anything else.

Mr. Gillen: If he formed an opinion about this case, it may be of great interest to us.

The Court: The challenge is denied.

Mr. Gillen: May we have an exception.

The Court: Yes.

Mr. Pike: Your Honor, I do not like to take the time, but I do think——

The Court (Interceding): There is nothing before the Court. Let us get along. Defendant's 7th peremptory.

Mr. Gillen: Excuse Mr. Humphrey.

(Lawrence A. Hill called and sworn.) [62]



The Court: Mr. Hill, do you know any reason why you could not be a fair and impartial juror?

A. No.

Q. Have you formed or expressed any opinion as to the guilt or innocence of this defendant?

A. No.

Q. At the present time your mind is open on the question? A. Yes.

Q. Are you acquainted with the defendant?

A. No, I am not.

Q. You are probably acquainted with some of these Reno attorneys, Mr. Pike, Bruce Thompson, Mr. McDonald, Mr. Lohse and Mr. Fry, his partner?

A. I know Mr. Pike, Mr. Thompson, and Mr. Lohse. I don't believe I know Mr. Fry.

Q. The other gentlemen are from San Francisco. Have any of these gentlemen acted as attorneys at law for you? A. No.

Q. Have any of the San Francisco attorneys had any business affairs with you? A. No, sir.

Q. Mr. Walter Campbell, have you had business affairs with him or acquainted with him?

A. No, sir.

Q. If you are selected as a juror, you would decide this [63] case entirely upon the evidence, unaffected or uninfluenced by any outside matter, such as sympathy or prejudice of any kind?

A. Yes, sir.

Q. You understand the defendant is presumed to be innocent until the evidence offered by the government should prove him guilty beyond a reason-

able doubt? You believe in those principles?

A. Yes, sir.

Q. And you would not hesitate to decide the case upon the evidence and find the defendant guilty if the evidence convinced you beyond a reasonable doubt, and you would not hesitate to vote for a verdict of not guilty in the event the evidence did not convince you beyond a reasonable doubt?

A. No, sir.

The Court: Any further questions?

No questions.

The Court: Any challenge for cause?

No challenge for cause.

The Court: The government's next peremptory, 5th.

Mr. Pike: The government will excuse Mr. McCauley.

(Nahum Tinkham called and sworn.)

The Court: Are you acquainted with the defendant in the case?

A. No. [64]

Q. Are you acquainted with any of the attorneys for either side? A. Yes.

Q. Which of the attorneys?

A. I know Mr. Fry and Mr. Thompson and Mr. Pike.

Q. Any of those gentlemen at the present time acting as attorneys at law for you?

A. No, sir.

Q. Have you consulted with any of them on any business matters? A. No, sir.

Q. We won't go over the whole ground again. You have heard what took place? A. Yes, sir.

Q. You believe generally in these things we have been talking about? A. Yes.

Q. And you understand it is absolutely necessary that we have fair and impartial jurors and that is what you would be if selected as a juror, would you not? A. Yes.

Q. You would decide the case entirely upon the evidence? A. That is right.

Q. You have no opinion one way or another, or have you? I don't want to put words in your mouth.

A. No. [65]

Q. You know of no reason why you could not be a fair and impartial juror if selected as a juror to try this case? A. No, sir, I do not.

The Court: Any further questions?

No questions.

The Court: Any challenge for cause?

No challenge for cause.

The Court: Defendant's 8th peremptory challenge.

Mr. Gillen: May I make an inquiry? I might state we apologize, because in our federal district the procedure is different, there we exercise alternately—and may inquire at this time, to enable us to use more intelligently this balance of our challenges, what is the Court's practice in regard to whom the remaining, the last challenge, is with?

The Court: We have never had that situation come up that way.

Mr. Gillen: Ordinarily the prosecution has the first challenge and the defense the last.

The Court: That is the way it will be. I am going to try to handle it so it will come down to the

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final situation with the government exercising their last challenge first.

Mr. Gillen: Very well.

The Court: Defendant's 8th peremptory.

Mr. Gillen: I wonder if we might ask your Honor to take a brief recess. I think we could facilitate the matter [66] of determining our final decision.

(Jury admonished and 15 minute recess taken at 2:30 P. M.)

2:45 P. M.

The Court: The record will show the presence of the defendant with counsel. It is the 8th peremptory challenge of the defendant.

Mr. Golden: The defense will excuse Mr. Steinhimer.

(Sarah Noble Parker called and sworn.)

The Court: You have been here all day and heard the discussions we have had?

A. Yes, sir.

Q. Are you acquainted with the defendant?

A. No, sir. I know no one here.

Q. While you have been sitting here and listening, has anything occurred to you, or reason suggested itself to you, why you could not be a fair juror if selected to decide this case?

A. I would be fair.

Q. You would decide the case entirely on the evidence? You wouldn't be influenced by any outside matters?

A. No, sir.

Q. You heard us talk about certain activities that might develop, but you want to bear in mind we want to try this case on what is in the indictment and you would be governed by it and decide the evidence as that would be considered by you and nothing else outside the case? [67]

A. Yes.

Q. You have no opinion or any impression of any kind as to the guilt or innocence of this defendant? A. No.

Q. And you believe in these principles, a defendant in every court in this country is presumed to be innocent until the State or government proves he is guilty beyond a reasonable doubt?

A. Yes, sir.

Q. Of course, this applies to this defendant and every defendant. A. Yes, sir.

Q. Are you acquainted with Mr. Pike, Mr. Thompson or Mr. McDonald of the United States attorney's office? A. None of them.

Q. Or Mr. Lohse, the defendant's counsel?

A. No, sir.

Q. And the other gentlemen are members of the San Francisco Bar, or are you acquainted with Mr. Walter Campbell, a government attorney?

A. No, sir.

The Court: Any further questions?

Mr. Pike: This may be going far afield, but I ask the Court to inquire who owns the Circle L Ranch, where her husband is foreman?

A. Mr. Cord. [68]

Mr. Pike: The man we have heard about who

is a very wealthy man, an automobile manufacturer?

A. I think that is the same man.

Mr. Pike: Have you seen him lately?

A. I wouldn't know him if I did see him.

The Court: Has any one ever talked to you about this case?

A. Oh no, I haven't read the newspapers.

Q. You haven't? A. No, sir.

The Court: Any further questions suggested?

No questions.

The Court: Any challenge for cause?

No challenge for cause.

The Court: Defendant's 9th peremptory challenge.

Mr. Golden: If the Court please, the defendant will excuse Mr. Lynch.

(Stanley J. Smith called and sworn.)

The Court: State your name and residence and occupation please.

A. Stanley J. Smith; Reno; my employment is Harold's Club.

Q. Have you heard this case discussed, Mr. Smith? A. Just what I read in the paper.

Q. Are you acquainted with the defendant, Mr. Remmer? A. I am not. [69]

Q. Have you formed any opinion as to the guilt or innocence of the defendant? A. No, sir.

Q. You have heard everything that has taken place here this morning? A. Yes, sir.

Q. I have tried to point out how necessary it is to have an equal administration of justice and that

is what we are striving to have in our country. It is necessary that juries and judges decide cases upon the evidence offered and admitted in court and nothing else, so we must not be influenced by any outside matters, sympathy on the one hand or prejudice on the other. We must decide our cases entirely upon the evidence. Do you know of any reason why you could not do that in this case? Is there any outside matter that you think of that might make it difficult for you to decide this case entirely upon the evidence?      A. No.

Q. The attorneys who are seated here, Mr. Pike, Mr. Thompson, Mr. McDonald, are our Nevada attorneys and we have Mr. Shelton sitting next to Mr. Pike there, who is a government attorney from San Francisco. We have Mr. Gillen, Mr. Golden, Mr. Lohse and Mr. Avakian. Have you heard of any of these attorneys?

A. Yes, I know Mr. Lohse and Mr. [70] McDonald.

Q. You are acquainted with those who live in Nevada?      A. Yes.

Q. Any of those at the present time acting as lawyers for you?      A. No, sir.

Q. Have you consulted any of them recently on any business or professional matters?

A. No, sir.

Q. So you feel if you are selected as a juror you could be fair to both the government and the defendant?      A. Yes, sir.

Q. You would require the government to prove its case beyond a reasonable doubt?

A. Yes, sir.

Q. And if the government failed to prove its case beyond a reasonable doubt, you would vote for a verdict of not guilty? A. Yes.

Q. On the other hand, if the evidence convinces you beyond a reasonable doubt, you would vote for a verdict of guilty? A. Yes.

Q. Would you hesitate to do that? A. No.

Q. Would you hesitate to vote for a verdict of not guilty if the evidence did not convince you beyond a reasonable doubt that the defendant was guilty? A. No. [71]

Q. You would follow the instructions given you by the Court and apply them to the facts as you understand them? A. Yes, sir.

The Court: Any further questions suggested?  
No questions.

The Court: Any challenge for cause?  
No challenge for cause.

The Court: The government's 6th peremptory.

Mr. Pike: Did the Court inquire of the last venireman whether or not he was acquainted with the case?

The Court: I think you told me, Mr. Smith, that you are not acquainted with Mr. Remmer?

A. Yes, sir.

Q. You have not discussed the case with any one who purported to know the facts?

A. No, sir.

Q. All you know is what you read in the paper?

A. Yes.

Q. You would decide the case upon the evidence and on nothing else and follow the instructions of



the Court as to the law covering the case?

A. Yes, sir.

The Court: Any other questions?

No questions.

The Court: Any challenge for cause? [72]

No challenge for cause.

The Court: Government's 6th and last peremptory.

Mr. Pike: The jury is satisfactory to the government.

The Court: It will be the defendant's 10th peremptory.

Mr. Gillen: Do I understand your Honor's policy, since the government has accepted the jury as it now stands, the remaining challenge that there is in the hands of the government can only be exercised against any new venireman?

The Court: No, I made that plain a little while ago. I addressed it to the defendants, that I do not want them to feel bound to accept any persons in the box and still have remaining challenges. I am going to allow each side to exercise its full allotment of challenges.

Mr. Gillen: It is perfectly all right, only I understand your Honor to mean if you pass a challenge it does not prevent you to go back.

The Court: That has been the practice in Nevada for years, but I think the Ninth Circuit held against that practice and I think the fair thing to do is when the statute gives you 10 peremptory, you can exercise 10 peremptory challenges.

Mr. Gillen: I was just inquiring. It does not

make a great deal of difference, I just want to know how we stand.

The Court: So the government can exercise its last peremptory challenge as to any one in the box, and likewise the defendant. Now the government has accepted the jury—wait a [73] minute—maybe I was wrong. I think in view of the fact the government has accepted the jury, their remaining peremptory challenge should be used only as to any new venireman in the box.

Mr. Gillen: That is right.

The Court: I think that would be fair. I didn't quite get the point. I understand now it is the defendant's 10th peremptory challenge.

Mr. Golden: The defense will excuse Mr. Kolster.

(Mrs. Helen S. Mack called and sworn.)

The Court: You have heard everything that has taken place in the courtroom?

A. Yes, I have.

Q. Are you acquainted with the defendant, Mr. Remmer? A. I am not.

Q. Has anything you have heard here that has taken place suggested to you any reason why you could not be a fair and impartial juror if selected to try this case? A. No.

Q. Have you any opinion one way or another as to the guilt or innocence of this defendant?

A. I have not.

Q. You may be acquainted with some of the attorneys here. We have Nevada attorneys and some San Francisco attorneys. Mr. Pike, Mr. Thompson

and Mr. McDonald represent the government [74]  
and in that office we have Mr. Kane.

A. I know Mr. Pike.

Q. And Mr. Compton is in the Las Vegas office,  
and on the other side we have Mr. Lohse and his  
partner, Mr. Fry.

A. I know Mr. Lohse but I do not know Mr. Fry.

Q. These gentlemen are not acting now as at-  
torneys at law for you? A. No, sir.

Q. Have you consulted any of them recently  
about any business? A. No, sir.

Q. And the gentlemen from the outside, you are  
not acquainted with them? A. No, I am not.

Q. You have not had any business matters with  
any of them? A. No.

Q. So if you were selected as a juror, you would  
try this case and decide it entirely upon the evi-  
dence? A. Yes.

Q. And you could arrive at a decision, could you  
not, based entirely upon the evidence, without any  
influence, or without being influenced by any out-  
side matters, just the evidence? A. Yes, sir.

The Court: Any further questions?

No questions. [75]

The Court: Any challenge for cause?

Mr. Golden: Would your Honor ask Mrs. Mack  
whether she is associated with, or a member of any  
organization or society which has as its object the  
abolition of any of the things we have been talking  
about here?

The Court: No, I would not ask that question.

Mr. Golden: Will your Honor ask whether she

has read about this matter in the newspaper?

The Court: Have you read about this in the paper? A. I have.

Q. From your reading have you formed or expressed any opinion as to the guilt or innocence of the defendant? A. No, sir.

Q. So if you were selected as a juror, you would be without any knowledge of what the evidence might be? A. Yes, sir.

Q. And you would be governed according to the evidence and nothing else? A. Yes, sir.

Mr. Golden: Will your Honor ask whether, in the event it appears there is some gaming or gambling concerned, whether that would make any difference?

The Court: Now, Mrs. Mack, you have heard me go over this matter with some other people in the jury box. We must keep in mind that the offense, or offenses—there are several [76] counts in this indictment—the matters with which we are concerned and which this defendant is concerned and with which the government is concerned are those matters in the indictment and nothing else. Now during the course of this trial it may be—and I have no more knowledge of what the evidence will be than you have—it may be that some activities of this defendant might appear, matters that are so completely connected with other facts of the case that it can't very well be avoided from appearing here. Some of those matters will be matters which you, or anybody else, would disapprove of. I don't know whether they would be of that character or wouldn't

be and whether you would approve or did not approve, but regardless of that, what I am trying to get at is we must decide the case entirely upon the charges contained in the indictment, so if those other matters came into this case we must decide this case entirely upon the evidence and not be prejudiced against this defendant on account of any of those matters.

A. I can.

Mr. Golden: I don't know what the lady's acquaintance is with Mr. Pike.

The Court: You have lived in Reno a long time?

A. I have.

Q. You probably know Mr. Pike for a long time? A. For years. [77]

Q. And there is nothing about that acquaintance that would influence you one way or another?

A. It is practically civic work.

Q. It wouldn't influence you any more than any other lawyer and the time you have been living in Reno you probably do know a great majority of the lawyers who have lived there for any considerable period of time, don't you, and if any of those other gentlemen were in this case, it wouldn't make any difference, so far as the facts are concerned, so far as Mr. Pike is concerned? A. No.

Mr. Golden: Thank you, your Honor.

Mr. Pike: The government is satisfied.

The Court: The jury will be sworn to try the case. Now we will proceed to the consideration whether or not we will have alternate jurors.

Mr. Pike: The trial may last over three weeks

and under those circumstances I respectfully suggest to the Court we should have at least one and probably two alternatives.

The Court: What is the view of counsel for the defendants?

Mr. Golden: We believe we should have alternates.

The Court: Two?

Mr. Pike: I think one would be enough.

Mr. Gillen: I think two. [78]

The Court: All right, we shall have two. Under Rule 24 (Reads rule). I understand we are going to empanel two alternatives. Each side will have one challenge. So the clerk will call the name of another juror.

(Elton L. Morris called and sworn.)

(Albert Conton called and sworn.)

The Court: The gentleman who is connected with newspapers, in your work have you had anything to do with reporters or articles rather concerning news items?

Mr. Conton: No, your Honor.

Q. You have not conversed with any newspaper people about the case, have you? A. No.

Q. Or with any one else? A. No.

Q. And have you, sir, have you talked to anyone about the case?

A. No more than the average person—read it in the paper.

Q. But have you had any conversations with any one about the case? A. No.

The Court: I am talking to both of you now. Have you any opinion, either one of you, as to the guilt or innocence of this defendant?

A. No. [79]

Q. Do you know anything about this case or heard anything about it, through your reading or any other source, in addition to what Mr. Pike said here this morning when he gave a brief statement of the nature of the case?

A. No.

Q. You understand that the defendant is presumed to be innocent and he is to be considered innocent unless, from the evidence, it should appear to a juror that he is not innocent. In other words, at the outset of the trial the defendant is considered an innocent man and is to remain so in the minds of the jury, or an individual juror, unless and until the evidence should convince a juror beyond a reasonable doubt to the contrary. You understand that and you appreciate the necessity of striving—perhaps we will never be able to accomplish it but we are striving to have an equal and fair administration of justice throughout the country, and the only way that can be obtained is to see that courts and juries decide cases on the evidence and the law of the case along and without influence of any matter from outside. You understand that, don't you?

A. Yes.

Q. And would you be so governed in this case, decide this case entirely upon the evidence?

A. Yes.

Q. Now it may be that one or both of you will be called upon [80] to act as jurors in the case if



selected as alternative jurors. Do you know of any reason, either one of you, why you could not be a fair and impartial juror if selected as a juror in this case? A. No.

The Court: Any further questions?

Mr. Golden: May we inquire whether the gentleman would be influenced should it appear during the course of the trial that his paper takes a position one way or another in this case?

The Court: I am going to ask something right here now. I have a feeling that the average man and woman has respect for his oath. I think we all ought to have that feeling and I have it and I think we are all conscientious and we try to do what is right. Now I am going to ask this jury to do something that probably is going to be hard to do. I am going to ask every member of this jury, and each of the alternate jurors, not to read, during the course of this trial, any newspaper accounts of this trial. Will you promise you will not do that, each and every one of you? The reason for that is, you are to get your impressions and views of this case from the witnesses and from the documents which may be introduced in court. Now you are going to hear a certain witness testify, say, for example. You might read accounts of his testimony in the paper in the next four or five days, one right after [81] another or several papers. They would give undue emphasis to that individual's testimony. Do I make myself clear? In other words, you might give importance to one individual's testimony because the newspaper article which you might read



would emphasize something about his testimony. You are to give emphasis to the testimony you hear here and be influenced by it as it appears to you and not by any newspaper articles. I think you understand. I am going to ask each and every one of you to avoid reading any newspaper articles of this trial. I do not say there would be anything in the paper not proper, I am not saying that, but it would give undue emphasis you are to give to this evidence as it comes in here. For the same reason I would not permit any juror to take any notes during the trial, and that is for the same reason. A juror might take notes and then when they get into the jury room it was a question as to what this witness said or didn't say, but somebody has a note. The person who has the note might have misunderstood but because he has notes, the jury might say, that is it, so I don't want any notes taken and I don't want you to read any articles in the papers, so I am going to ask you not to do that and I feel confident you won't. All we want is fair and impartial treatment given this defendant and the government and a fair trial. Now will you refrain—I ask you especially because you are connected with newspapers.

Mr. Golden: The question is whether working there, he [82] could hardly fail to know the paper's policy, whether that paper's policy would have any influence on an employee of that paper, that is the question.

The Court: Now has anyone connected with any of the newspapers, either employed or connected

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with or working with it, any idea as to how they stand on this case? A. No, your Honor.

Q. Have any of them talked to you about the case? A. No.

Q. If there is a policy by one or more of these newspapers about this case, do you know what it is? A. No, I do not.

Q. You are not going to talk to any of them about it? A. No.

Q. You are not going to permit any of these people to talk to you about it? A. No.

Mr. Golden: We again ask whether he has read the local papers of yesterday and this morning and whether from that he would have any opinion as to the policy of those papers?

The Court: Did you read the papers the other day?

A. This might sound strange to say sir, but three or four months ago, when I was made a member of the panel and saw a headline dealing with any case coming into federal court, I didn't read the [83] article.

Q. So up to this time you are not effected one way or another by anything that might have appeared in your paper? A. No, your Honor.

Q. Did you read these articles yesterday or the last few days concerning this case?

A. No, your Honor.

Mr. Golden: No further questions.

The Court: Have you any questions?

Mr. Pike: Yes. I don't believe the Court in-

quired as to whether or not they are acquainted with the defendant.

The Court: Are either of you gentlemen acquainted with the defendant, Mr. Remmer?

A. No.

Q. Are any of these attorneys acting as lawyers for you? A. No, your Honor.

The Court: Any other questions, Mr. Pike?

Mr. Pike: None.

The Court: Any challenge for cause?

(No challenge for cause.)

The Court: Government's first peremptory challenge.

Mr. Pike: The two alternative jurors are satisfactory.

The Court: Defendant's peremptory challenge.

Mr. Golden: Excuse Mr. Conton.

(C. A. Tompkins called and sworn.)

The Court: Have you heard this case [84] discussed?

A. Read in the newspapers about it.

Q. From what you have read in the newspapers, have you formed or expressed any opinion?

A. No sir.

Q. Or from any other source have you formed or expressed any opinion as the guilt or innocence of the defendant? A. No.

Q. Do you know any reason why you could not be a fair and impartial juror if selected as a juror in this case?

A. There is none in my mind.

Q. You have not talked to any one about the case?

A. Just reading the newspapers and comments made.

Q. You have had conversation after reading the paper with some one?

A. Yes, just ordinary conversation I would have with any one here.

Q. But did you talk with any one who had or thought they had some idea as to what the evidence in the case would be? A. No.

Q. You have heard the discussion we have had here all day, the necessity of having cases tried and decided on the evidence alone, and if you are selected as a juror in this case, would you and could you decide this case entirely upon the evidence brought into court? A. Yes, sir. [85]

Q. Regardless of any outside influence of any kind? A. Yes, sir.

Q. The defendant is presumed to be innocent until the contrary should appear beyond a reasonable doubt. If the government does not prove the case beyond a reasonable doubt, you should vote for a verdict of not guilty. If, on the other hand, you are convinced by the evidence beyond a reasonable doubt the charge is true, it is your sworn duty to vote for a verdict of guilty. You understand that?

A. Yes, sir.

Q. That is what you would do?

A. Yes, sir.

Q. Are you acquainted with the defendant?

A. Yes.

Q. How long have you known him?

A. Just through my routine duties as cashier.

Q. You have seen him at different times?

A. I don't know him personally—see him come in and out.

Q. Have you had any personal transactions with him?

A. None whatsoever other than cashier.

Q. Other than cashier in the Bank Club?

A. No.

Q. You are not associated with him in any business?

A. No, sir.

Q. You have no interest in any business [86] of his?

A. No, sir.

Q. Have you any social acquaintance with him?

A. No, sir.

Q. Is there anything about that acquaintance, or as a result of that acquaintance, that would make it difficult for you to be a fair and impartial juror in this case?

A. I see no reason why I should not.

Q. It would not influence you for him or against him?

A. No, sir.

The Court: Any further questions?

(No questions.)

Mr. Pike: At this time the government will excuse Mr. Tompkins.

(John H. Newman called and sworn.)

The Court: Do you know the defendant?

A. No, sir.

Q. Are you acquainted with the attorneys, Mr. Pike, Mr. Thompson, Mr. McDonald, Mr. Lohse, Mr. Fry, and the other gentlemen from San Francisco, the gentlemen there seated, have you ever seen any of them before? A. No.

Q. And Mr. Walter Campbell, a government attorney may appear here later. Do you know him?

A. No.

Q. So none of these attorneys have been acting as attorney [87] for you? A. No, sir.

Q. Have you talked to anybody about this case?

A. No, sir.

Q. Do you know any more about it than you have heard in court this afternoon? A. No.

Q. Or from Mr. Pike this morning when he made a brief statement? A. No.

Q. You would decide this case, if you were selected as a juror—and you might be a juror in the event one of the other jurors should suddenly become ill—and you know of no reason why you couldn't decide this case entirely upon the evidence?

A. No, sir.

Q. You would not be influenced by any prejudice of any kind? A. No.

Q. Regardless of any circumstances, you would just decide the case entirely upon the evidence?

A. Yes.

The Court: Any questions?

(No questions.)

The Court: Any challenge for cause?

(No challenge for cause.)

The Court: The alternate jurors will stand and be sworn. [88]

(Alternate jurors sworn.)

The Court: The clerk will read the indictment and state the plea of the defendant.

(Clerk reads indictment.)

(Jury and alternate jurors admonished and recess taken for 15 minutes at 3:35 p.m.)

3:50 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

(Opening statement by Mr. Pike.) [89]

State of Nevada,  
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had in the case entitled United States of America, Plaintiff, vs. Elmer F. Remmer, Defendant, No. 12,177, at the trial of the case commencing November 28, 1951, at Carson City, Nevada, and that the foregoing pages, numbered 1 to 89, inclusive, comprises a full, true, and correct transcript of my said shorthand notes of the proceedings

3746

*Elmer F. Remmer vs.*

of the selection of the jury on Wednesday, November 28, 1951, to the best of my knowledge and ability.

Dated at Carson City, July 14, 1952.

/s/ MARIE D. McINTYRE,  
Official Reporter.

[Endorsed]: Filed July 14, 1952.

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[Endorsed]: No. 13281. United States Court of Appeals for the Ninth Circuit. Elmer F. Remmer, Appellant, vs. United States of America, Appellee. Supplemental Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed July 15, 1952.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.



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No. 13281

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**United States  
Court of Appeals**  
*For the Ninth Circuit*

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ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

**Appeal from the United States District Court  
for the District of Nevada**

---

**Proceedings Had in the United States Court of Appeals  
for the Ninth Circuit**

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Phillips & Van Orden Co., 870 Brennan Street, San Francisco, Calif.

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United States Court of Appeals  
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Thursday, April  
9, 1953.

Before: Mathews, Stephens and Orr,  
Circuit Judges.

ORDER OF SUBMISSION

Ordered appeal in above cause argued by Mr.  
Spurgeon Avakian, counsel for appellant, and by  
Mr. Joseph A. Sommer, Special Assistant to the  
Attorney General, counsel for appellee, and sub-  
mitted to the court for consideration and decision,  
with leave to counsel for file further memorandum.

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United States Court of Appeals  
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Thursday, May  
28, 1953.

Before: Mathews, Stephens and Orr,  
Circuit Judges.

ORDER DIRECTING FILING OF OPINION  
AND FILING AND RECORDING OF  
JUDGMENT

Ordered that the typewritten opinion this day  
rendered by this court in above cause be forthwith  
filed by the clerk, and that a judgment be filed and  
recorded in the minutes of this court in accordance  
with the opinion rendered.

United States Court of Appeals  
for the Ninth Circuit

No. 13,281

ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

May 28, 1953

Appeal from the United States District Court  
for the District of NevadaBefore: Mathews, Stephens and Orr,  
Circuit Judges.

Orr, Circuit Judge:

## OPINION

Appellant stands convicted on four counts of an indictment charging wilful attempts to defeat and evade taxes due and owing from him and his wife for the years 1944 and 1945 in violation of §145 (b) of the Internal Revenue Code, 26 U.S.C.A. § 145 (b).<sup>1</sup> He was sentenced to imprisonment for five

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<sup>1</sup>“26 U.S.C.A. § 145. Penalties.

\* \* \*

“(b) Failure to collect and pay over tax, or attempt to defeat or evade tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax

years and a fine of \$5,000 on each of the four counts, the sentences of imprisonment to run concurrently and the fines to be cumulative. The judgment is challenged upon numerous grounds.

#### I. Bill of Particulars.

Appellant first contends that the trial court erred in denying his motion for a bill of particulars made pursuant to the provisions of Rule 7 (f), Federal Rules of Criminal Procedure.<sup>2</sup> Particular stress is placed upon the fact that the indictment did not inform him as to the source or sources of his alleged net income, the item or items making up his alleged net income, and the method or methods by which the Government computed his alleged net income. An application for a bill of particulars is one addressed to the sound discretion of the

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imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

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<sup>2</sup>18 U.S.C.A. Federal Rules of Criminal Procedure.

#### III. Indictment and Information.

"Rule 7. The Indictment and the Information.

\* \* \*

"(f) Bill of Particulars. The court for cause may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires."

court. Our inquiry: Was that discretion abused? *Wong Tai v. United States*, 273 U. S. 77 (1927); *Himmelfarb v. United States*, 175 F.2d 924 (9th Cir. 1949), cert. denied, 338 U. S. 860; *Maxfield v. United States*, 152 F.2d 593 (9th Cir. 1945), cert. denied, 327 U. S. 794. A bill of particulars should be granted where it is thought necessary (1) to protect the defendant against a second prosecution for the same offense, or (2) to enable the defendant to adequately prepare his defense and avoid surprise at the trial. In the instant case the indictment charged that appellant filed tax returns disclosing a certain net income and tax due, whereas, in fact the net income and tax due were of a specified greater amount. It is apparent that the offense charged is sufficiently defined to protect appellant from double jeopardy. We deem it significant that appellant has not contended that he was subjected to surprise during the trial by the nature of the Government's case and thus unprepared to meet the charges against him. See *Himmelfarb v. United States*, *supra*; *Maxfield v. United States*, *supra*. The situation is quite different from that in *Singer v. United States*, 58 F.2d 74 (3d Cir. 1932), upon which appellant relies, since there emphasis was placed upon the frequent interruptions of the trial that were necessary so that the prosecution could give the defendant information which would have been contained in a requested bill of particulars. Thus, the defendant in that case was in fact unable adequately to prepare his defense because of the failure to grant the bill. Moreover, the indictment

in the *Singer* case failed to distinguish certain partnership gross income from partnership net income, an item upon which the defendant should have been advised and which could have been ascertained only from a bill of particulars. No such prejudice to appellant is evident in the instant case. The offense charged was specifically stated in the indictment. Appellant was in a position to know whether the facts alleged were true. The most to which appellant was entitled prior to trial was disclosure of the theory of the Government's case. *United States v. Caserta*, 199 F. 2d 905 (3d Cir. 1952). That the Government was proceeding upon a net worth theory was made known to appellant during the course of argument on the motion for a bill of particulars.<sup>3</sup> The District Court in the exercise of its discretion determined that granting the requested bill of particulars would merely apprise appellant of information in the hands of the prosecution to which he was not entitled. Under the circumstances, no abuse of discretion appears. A bill of particulars has been denied in prosecutions under similar tax evasion indictments. See *United States v. Rainey*, 10 F.R.D. 431 (W.D.Mo. 1950); *United States v. Mangiaracina*, 10 F.R.D. 415 (W.D.Mo. 1950); but see *United States v. Kelly*, 10 F.R.D. 191 (W.D.Mo. 1950).

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<sup>3</sup>Mr. Campbell, Government counsel, made the following statement:

"Mr. Campbell: Well, we are in this position, your Honor—as Mr. Golden is aware, the Government's case here is what is termed a net worth case."



## II. Accessibility of Records.

Appellant asserts that the trial court erred in denying the defense access to certain books, papers and documents in the possession of the Government. The following facts are pertinent to consideration of this contention.

Long prior to the filing of the criminal indictment in April of 1951, appellant knew that the Government was investigating his income tax liability. The Bureau of Internal Revenue issued 90-day letters in 1949 and prior to February of 1950 a federal income tax lien in excess of \$800,000 was placed against his property. Numerous conferences were had subsequent to January 11, 1950, with various attorneys and accountants representing appellant in tax matters. Power of attorney was executed by appellant to counsel of record in the present litigation as early as March 10, 1950, for the purpose of representing appellant in tax conferences with the government. Other attorneys and accountants have represented appellant with the Treasury Department since early in 1949, powers of attorney filed with that department disclose.

During the course of its investigation, the Government acquired voluntarily from third parties certain books, papers and documents pertaining to businesses in which it was alleged that appellant had an interest.<sup>4</sup> Being advised, in the course of confer-

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<sup>4</sup>In computing appellant's income for the years 1944 and 1945 the Government relied in part upon the net worth of the following businesses: B-R Smoke Shoppe, Day-Nite Cigar Store, 110 Eddy

ences, that an audit of appellant's affairs was being conducted, the Government gave appellant's accountants complete access to the aforementioned records in its possession. An affidavit executed by one of these accountants stated that the material consisted of a "mass of original documents" and that "this material filled a packing box of approximately fifty cubic feet in volume plus several other smaller cartons." Although the accountants surveyed the material at this time, spring of 1950, no complete analysis of the records is said to have taken place since appellant did not make sufficient funds available for the task. At another time prior to the filing of the indictment in this case, accountant Lawrence Semenza sought permission to examine these records in connection with work he was doing for appellant in computing his civil tax liability subsequent to issue of the 90-day letters. Semenza was not only allowed to examine the business records in the possession of the Government, but was allowed to select any records he desired for use in his own office.

After the filing of the indictment, no request was made by appellant's counsel for examination of the records not previously selected by Semenza until October 22, 1951, more than six months after the filing of the indictment. The Government agreed to allow inspection of these records only on the compliance with certain conditions: a sufficient showing of appellant's interest and consent of the third

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Street, and Menlo Club, all in San Francisco: 21 Club and San Diego Social Club, both in El Cerrito, California.

parties who had originally given the records to the Government.

Appellant first sought a court order on November 14, 1951, when a motion was made to inspect and take copies pursuant to the provisions of Rule 16, Federal Rules of Criminal Procedure.<sup>5</sup> In conjunction with this motion, appellant also sought a continuance of his trial until April 1, 1952, to enable sufficient time for examination of the requested records. In this regard, it should be noted that trial was set for November 28, 1951. The motions to inspect and take copies and for a continuance were denied by the trial court after a hearing.

The District Court properly exercised its discretion in denying these motions. As has been observed, at no time prior to the filing of the indictment was the freedom of appellant to examine the records

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<sup>5</sup>18 U.S.C.A. Federal Rules of Criminal Procedure.

IV. Arraignment and Preparation for Trial.

"Rule 16. Discovery and Inspection.

"Upon motion of a defendant at any time after the filing of the indictment or information, the court may order the attorney for the government to permit the defendant to inspect and copy or photograph designated books, papers, documents or tangible objects, obtained from or belonging to the defendant or obtained from others by seizure or by process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable. The order shall specify the time, place and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just."

in the possession of the Government in any way limited. At least three accountants representing appellant did in fact survey the material in question and one accountant was allowed to take all records he thought necessary for the computation of appellant's tax liability.<sup>6</sup> Although it is true that accounting analysis of these records was at that time only for the purpose of settling appellant's civil tax liability, based on net income alleged by the government in its 90-day letters to be \$136,718.94 for 1944 and \$265,661.78 for 1945, analysis of the materials for that purpose would of necessity cover the same ground and consider the same sources of income as would analysis for the purpose of the present criminal proceedings where the Government alleged lesser sums as income: \$67,469.21 for 1944 and \$75,865.19 for 1945. The opportunity afforded appellant to examine the records in question was sufficient to

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<sup>6</sup>Mr. Semenza testified as follows concerning his acquisition of records which were in the possession of the Government:

"Q. [By Mr. Campbell]: At the time you obtained those records, isn't it a fact you were taken into a room where the records were and told you could have anything you wanted?

"A. That is true.

"Q. And you were the one who selected these particular records as they were the pertinent records having to do with the matter which you were then investigating, which was the liability of Mr. Remmer? A. That is right.

"Q. They were the only records you considered of any use to you in that connection?

"A. That's right."

enable him to prepare an adequate defense. Furthermore, there is no adequate explanation as to why appellant waited more than six months after filing of the indictment to request permission of the Government to examine the records and first made his motion under Rule 16 two weeks before the trial was due to commence. The affidavits supporting the motion to produce and take copies conceded that accounting analysis of the records would probably take two or three months. One of appellant's counsel averred in his supporting affidavit that he first learned in October of 1951 that the Government had possession of various books and records of some of the business in which appellant had an interest.<sup>7</sup> But the facts to which we have already referred show that other representatives of appellant knew of the existence of the records, and at the very least had surveyed the material, many months earlier. The motion to produce and take copies therefore was not timely. To refuse to continue the trial until April 1, 1952, as requested, was not an abuse of the court's discretion in view of appellant's tardiness in bringing his motion.

Subsequent to denial of his motion to inspect and take copies under Rule 16, appellant on November 23, 1951, filed a motion for production and inspection under the provisions of Rule 17(c), Federal

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<sup>7</sup>However, another of appellant's counsel stated during oral argument of the motion that counsel learned at an "early stage in this case" that the Government had "quite an abundance of records."

Rules of Criminal Procedure.<sup>8</sup> A subpoena duces tecum was served on Government counsel, which they thereupon moved to quash. After a hearing on the day before the trial was to commence, the trial court granted the Government's motion and denied appellant's motion. Because of the circumstances already discussed, the court did not err in determining that compliance with the subpoena would be unreasonable and oppressive.

The case of *Bowman Dairy Co. v. United States*, 341 U.S. 214 (1951), is not authority for the proposition that the trial court's denial of the motion under Rule 17(c) was an abuse of discretion, as appellant has argued. The Supreme Court in that case held that the trial court had the power to order the Government to produce certain documents.

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<sup>8</sup>18 U.S.C.A. Federal Rules of Criminal Procedure.

IV. Arraignment and Preparation for Trial.

"Rule 17. Subpoena.

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"(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys."

It did not hold that a refusal to grant the motion to produce would have been an abuse of discretion.

We think it important to stress, in considering whether denial of appellant's motions should be upheld, that the purpose of motions of this type is to expedite the proceedings and enable a defendant adequately to prepare his defense. No specific showing has been made by appellant as to how the denial of these sweeping motions calling generally for production of all records in the possession of the Government pertaining to businesses in which it was alleged appellant had an interest prejudiced the defense during the course of the trial. The court stated that appellant's counsel would be given ample opportunity during the trial to examine any document offered by the Government. Only once during the trial did appellant seek the production of particular papers, certain daily poker sheets from the 186 Club, and the request was granted.

We have referred to certain books, papers and documents given voluntarily by third parties to the Government, which were selected by appellant's accountant Semenza prior to the indictment and taken by him to his own office for use in computing appellant's tax liability. These records were given to Semenza upon the condition that he return them to the Bureau of Internal Revenue. Semenza later gave the records to Friedman, another accountant employed by appellant, who in turn gave the records to appellant's counsel. When subpoenaed before the grand jury, and later during the trial, Semenza said he was unable to produce the records because ap-



pellant's counsel would not return them to him. The District Court then ordered appellant's counsel to deliver these records to the clerk of the court, the records to be available to both Government and defense counsel during the trial. Appellant thereupon made a motion under Rule 41(e), Federal Rules of Criminal Procedure,<sup>9</sup> for return of these records and suppression of their use as evidence. The motion was denied.

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<sup>9</sup>18 U.S.C.A. Federal Rules of Criminal Procedure.

IX. Supplementary and Special Proceedings.

"Rule 41. Search and Seizure.

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"(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing."



Appellant contends that the trial court's order violated the Fourth and Fifth Amendments to the Constitution of the United States. We do not agree. The records given to Semenza were obtained by the Government from third parties rather than from appellant. Use of such records by the prosecution would not violate appellant's constitutional rights, even were it true that the third parties originally obtained the records from appellant illegally.<sup>10</sup> See *Lustig v. United States*, 338 U.S. 74, 78-79 (1949); *Feldman v. United States*, 322 U.S. 487, 492 (1944); *Symons v. United States*, 178 F.2d 615 (9th Cir. 1949). Since the Government's possession was such as properly to entitle it to use of the records as evidence, the condition that the records be returned was lawfully imposed when Semenza's request to select certain records for accounting analysis was granted. Such a promise to return the records was enforceable. Cf. *Greenbaum v. United States*, 280 Fed. 474, 478 (6th Cir. 1922). Appellant's counsel took the records subject to the imposed condition and therefore could not retain them by asserting so-

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<sup>10</sup>There is no indication in the record on appeal that the books and documents were ever taken from appellant's possession illegally. At the hearing on the motion for return of the books and documents and suppression of their use as evidence, appellant sought permission to adduce testimony as to the circumstances of the Government's original acquisition of the records. The District Court held that appellant's attempt to raise this question for the first time at that point in the proceedings was not timely, relying upon the last sentence of Rule 41(e), Federal Rules of Criminal Procedure.

called constitutional rights of appellant. As the Supreme Court said in *Hale v. Henkel*, 201 U.S. 43 (1906) at 69-70: "The right of a person under the Fifth Amendment to refuse to incriminate himself is purely a personal privilege of the witness. It was never intended to permit him to plead the fact that some third person might be incriminated by his testimony, even though he were the agent of such person." (Emphasis added.) Nor was appellant in a position to assert constitutional rights, because appellant never acquired personal possession of the records after they were given by the Government to Semenza. "A party is privileged from producing the evidence but not from its production." *Johnson v. United States*, 228 U.S. 457, 458 (1913).

The case of *People v. Minkowitz*, 220 N.Y. 399, 115 N.E. 987 (1917), referred to for the first time by appellant during oral argument, is distinguishable. That case involved papers originally in the possession of the defendant which had been given to his attorney in the course of an attorney-client relationship. The court held that under those circumstances the possession of the attorney was the possession of the defendant, and the attorney therefore could not be compelled to produce the papers. In the present case, however, the records were not acquired by appellant's counsel from appellant in the course of an attorney-client relationship, but were instead received from the Government subject to the condition that they be returned.

## III. Sufficiency of the Evidence.

The Government's case is based upon the net worth method, the underlying theory of which is that where a person's net worth at the end of a particular year is greater than his net worth at the beginning of that year, and such increment is not attributable to gifts, devises, loans, or other non-income sources, an inference may be drawn that the increase in net worth represents income to the taxpayer. The net worth computations of the Government tended to show that appellant had failed to report taxable income of \$31,747.91 in 1944 and \$11,747.04 in 1945. No attempt was made by the Government in this case to increase this sum by the amount of appellant's non-deductible expenses during the years in question. The Government not only relied upon numerous documents and the testimony of more than fifty witnesses to establish the increment in appellant's net worth during the years 1944 and 1945, but also extensively investigated possible non-income sources of net worth in order to exclude their effect. The question of the sufficiency of the evidence was raised by appellant's motion for judgment of acquittal made at the close of the case.

The net worth method of computing income may be used only where a taxpayer does not keep books or such books are inadequate in that they do not clearly reflect income. See 26 U.S.C.A. § 41. The jury was so instructed in the present case, and the evidence is sufficient to sustain a finding that appellant's records were inadequate. Ray Weaver, the special agent in charge of the Bureau of Internal

Revenue investigation, testified, as an expert, that in his opinion the records of the enterprises in question were not adequately kept. Specific illustrations of such inadequacy were given by Weaver and other witnesses.<sup>11</sup> As hereinbefore stated, appellant's accountants had made a survey of the records pertaining to appellant's business enterprises in the Government's possession prior to trial. Therefore, the alleged failure of the Government to introduce in evidence all such records in its possession is not significant since if any records adequately reflecting income were in existence appellant could have specifically requested their production during the trial.

Appellant attacks the accuracy of the Government's computation of his starting point net worth, that is, his net worth on December 31, 1943. It was necessary for the Government to establish appellant's net worth at the beginning of the period during which the alleged evasion occurred in order to compare his increment in net worth with the income actually reported by appellant on his and his wife's tax returns. The fundamental question presented is what quantum of evidence must be offered by the Government before a trial court can properly submit the case to the jury. Whether sufficient evidence has been introduced in a given case will of course

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<sup>11</sup>For example, William E. Kyne testified that he kept the records of the B-R Smoke Shoppe; that these records consisted of a single entry each day, whether the business had lost or won; that this daily entry was a net figure arrived at after all the expenses of doing business had been paid, including salaries.

depend upon the facts of that particular case. In deciding whether the trial court properly denied appellant's motion for judgment of acquittal, the evidence must be taken in the light most favorable to the Government. *Gendelman v. United States*, 191 F.2d 993 (9th Cir. 1951). Proof of the exact amounts of unreported income is not required. The evidence is sufficient if the jury is justified in finding therefrom, beyond a reasonable doubt, that there has been a wilful attempt to evade taxes. *United States v. Johnson*, 319 U. S. 503 (1943); *Goldbaum v. United States*, .... F.2d .... (9th Cir. April 13, 1953).

In the instant case the Government thoroughly investigated appellant's potential sources of net worth. It was not incumbent upon the prosecution to prove appellant's net worth to a mathematical certainty before the case could be submitted to the jury. As the Fourth Circuit said in *Bell v. United States*, 185 F.2d 302 (4th Cir. 1950), cert. denied, 340 U.S. 930: "An estimate of the taxpayer's net worth as the means of determining his income is resorted to in the absence of accurate records which it is his duty under the statute to make and to preserve, and by its very nature it is an approximation; but it has been held in this and other jurisdictions to be an appropriate method to support a criminal prosecution under the statute \* \* \*." (Emphasis added.) 185 F.2d at 308. See also *Garipey v. United States*, 189 F.2d 459 (6th Cir. 1951); *Schuermann v. United States*, 174 F.2d 397 (8th Cir. 1949), cert. denied, 338 U.S. 831.

Reference was made during the trial to a certain safe deposit box in which appellant purported to keep money. Appellant contends that the possibility that substantial funds were kept in the box destroys the validity of the Government's net worth computations, yet appellant did not attempt in any way at the trial to prove that substantial funds were in fact kept in the box. Other evidence introduced at the trial, such as the fact that a judgment of \$1800 obtained against appellant in 1938 was not paid until 1945, tended to show that appellant did not have substantial cash at the beginning of 1944. Requests by the Government to examine the contents of the safe deposit box were refused. If a defendant could prevent a case of this type from being submitted to the jury merely by stating he had further assets not taken into consideration by the Government, yet refusing to disclose them, enforcement of the tax evasion provisions of the Internal Revenue Code would be completely frustrated. Skillful concealment cannot be made an invincible barrier to proof. *United States v. Johnson, supra*, at 518. More than mere speculation is required to support a motion for judgment of acquittal. The only affirmative evidence concerning the safe deposit box in question was the testimony of one witness that on December 3, 1943, he placed \$17,000 in the box. Were we to assume that this money remained in the box on December 31, 1943, the Government's case would not fall since the net worth computations, including the additional \$17,000 as part of opening net worth for 1944, would

still show unreported income of \$14,747.91 for the year 1944.

Reliance is placed by appellant upon the cases of *Bryan v. United States*, 175 F.2d 223 (5th Cir. 1949)<sup>12</sup> and *United States v. Fenwick*, 177 F.2d 488 (7th Cir. 1949), where judgments of conviction were reversed because of the insufficiency of the evidence. This court, in *Davena v. United States*, 198 F.2d 230, 231 (9th Cir. 1952), questioned the "vitality" of the *Fenwick* case, and the majority opinion in the *Bryan* case was accompanied by a strong dissent. Although these decisions may well have been appropriate because of the particular facts there involved, we believe the general language of the opinions too narrowly limited the function of the jury as the triers of fact.

It is true, as appellant contends, that proof of increased net worth is only circumstantial evidence of taxable income.<sup>13</sup> The test to be applied on motion for judgment of acquittal in such a case, however, is not whether in the trial court's opinion the evidence fails to exclude every hypothesis but that of guilt, but rather whether as a matter of law reasonable minds, as triers of the fact, must be in agreement that reasonable hypotheses other than guilt

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<sup>12</sup>The Supreme Court granted certiorari to examine a procedural issue not relevant to the instant case and affirmed the Fifth Circuit's holding on that issue. 338 U.S. 552 (1950).

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<sup>13</sup>The District Court, in its instructions to the jury, properly explained the nature and effect of circumstantial evidence.



could be drawn from the evidence.<sup>14</sup> *Stoppelli v. United States*, 183 F.2d 391 (9th Cir. 1950), cert. denied, 340 U.S. 864. If reasonable minds could find that the evidence excludes every reasonable hypotheses but that of guilt, the question is one of fact and must be submitted to the jury. *Curley v. United States*, 160 F.2d 229 (D.C. Cir. 1947), cert. denied, 331 U.S. 837; *Stoppelli v. United States*, *supra*. Judged by this standard, the motion for judgment of acquittal was properly denied in the present case.

Appellant argues in his reply brief that even if there was sufficient evidence to show a tax deficiency there was no evidence of fraud. A state of mind can seldom be proved by direct evidence but must be inferred from all the circumstances. A wilful intent to evade income taxes may be inferred from such factors as appellant's failure to include a substantial amount of income on his and his wife's tax returns, the failure to keep adequate books which would clearly reflect income, and the concealment of the ownership of property such as a safe deposit box, real estate interests, and business licenses. These factors, all present in the instant case, are but part of a general pattern of conduct engaged in by appellant from which the jury could infer the requisite intent. See *Norwitt v. United States*, 195 F. 2d 127, 132 (9th Cir. 1952).

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<sup>14</sup>We interpret *Karn v. United States*, 158 F. 2d 568 (9th Cir. 1946), as holding in that case's factual context that no reasonable jury could have found that the evidence excluded every reasonable hypothesis but that of guilt.



The Government contended during the trial that certain unincorporated business enterprises of the appellant were to be treated as sole proprietorships for tax purposes, while appellant contended that they were partnerships.<sup>15</sup> The test for determining recognition of a partnership for federal income tax purposes is whether "the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." *Commissioner v. Culbertson*, 337 U.S. 733, 742 (1949). The question is one of fact. *Toor v. Westover*, 200 F. 2d 713 (9th Cir. 1952); *Harkness v. Commissioner*, 193 F. 2d 655 (9th Cir. 1951), cert. denied, 343 U.S. 945. There is substantial evidence to support the Government's contention that the alleged partnerships should not be recognized for tax purposes. The record discloses, among other things, that the enterprises were financed by a single fund belonging to appellant, that appellant made the policy decisions, that the purported partners were not to acquire an interest in the assets of the business until appellant had withdrawn an amount equal to his original capital investment, that no profits were actually distributed during the years in question to persons other than appellant, and that in at least one instance a new partner

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<sup>15</sup>The enterprises in question included the B-R Smoke Shoppe, Day-Nite Cigar Store, 110 Eddy Street, and the Menlo Club. The extent of appellant's interest in the 21 Club and the San Diego Social Club was not in dispute.

entered the business without another partner knowing the terms.

Two further contentions are made by appellant which pertain only to Counts Three and Four, the counts based upon the year 1945.

(1) Appellant asserts that in computing closing net worth for the year 1945 the Government improperly included \$15,000 in markers or IOU's as cash of the B-R Smoke Shoppe, one of appellant's enterprises. Regardless of whether such markers should technically be treated as cash or accounts receivable, they were properly included as part of the assets of the business. Appellant can hardly rely upon the fact that the enterprise was engaged in the illegal business of bookmaking, and that therefore, under California law, the markers were unenforceable. It is obvious that appellant accepted markers as a substitute for cash from his customers because he thought he could find certain effective if not legal means of enforcing them. He considered the markers to be assets of his business, capable of being reduced to cash. We do not believe as a practical matter he was mistaken.

(2) In computing closing net worth for the year 1945 the Government recognized a debt of \$100,000 owed by appellant to Gene Schriber as part of the \$175,000 purchase price of the Menlo Club. Appellant argues that actually a sum of \$125,000 was owing at the end of 1945. His position is supported by the testimony of Schriber and what purports to be a page of the 1947 Menlo Club ledger, this

ledger being part of the records given to appellant's accountant Semenza prior to the trial and subsequently impounded with the court clerk by order of the Court during the trial. The Government relies upon a photostat of a page of the 1945 ledger of the Menlo Club, stating that the original was part of the records given to Semenza, that this page was never returned, and that the alleged page of the 1947 ledger upon which appellant relies first made its appearance upon return of the records to the clerk of the court. Appellant seeks to explain the inconsistency in the ledgers by stating that the first payment of \$25,000 was returned to appellant so that a check for the same amount could be substituted in order to enable appellant to keep a record of the transaction. It is said that the 1945 ledger is in error in that it treats this transaction as two separate payments. This was a question of fact for the jury; it was resolved against appellant.

#### IV. Admissibility of Evidence.

Complaint is made to a number of rulings by the trial court in regard to the admission and exclusion of evidence during the course of the trial. Appellant's contentions must be considered in conjunction with the salutary rule that the discretion of the trial court should not be disturbed in such matters unless the accused has been deprived of substantial rights. See Fed. R. Crim. P. 52(a). Upon reviewing the alleged errors in the light of the aforesaid principle of law, we cannot say that the District

Court erred. See *United States v. Johnson*, 319 U.S. 503, 519-520 (1943).

Witness Agnes Badobinatz was allowed to testify over appellant's objection, that in February of 1947 her husband, now deceased, told her that he was going to repay \$5,000 he had borrowed from appellant. Appellant argues that since there was no testimony as to when the obligation was incurred the Government failed to lay a proper foundation for Badobinatz's testimony. Admission of this testimony, however, could not have been in any way prejudicial to appellant since the Government's final computation of appellant's net worth did not include this \$5,000 for any of the years in question.

Witness A. V. Brady, an agent of the Bureau of Internal Revenue, testified concerning the investigation of appellant's tax liability and the preparation of the net worth statement upon which the Government's case was based. Appellant objects to Exhibit No. 183, the financial statement prepared by Brady to reflect changes in appellant's net worth during the years 1944-1946, which was admitted in evidence during the witness' testimony. It is urged that there was insufficient evidence to support admission of the statement. We have already held that the Government's evidence was sufficient to take the case itself to the jury. The net worth statement in question was constructed from all the evidence in the case. There was, therefore, sufficient evidentiary basis in the record for admission of the statement. Brady's estimate of appellant's federal income tax liability based upon

the net worth computation was also admissible, since he was testifying as an expert witness.

During the trial appellant had sought to prove that at the end of 1946 he owed Robert Jeffress the sum of \$50,000. The Court ruled that testimony by Jeffress' wife that in July of 1947 her now deceased husband told her of the debt and that part of it had been repaid was inadmissible. Since the jury was unable to agree in regard to the counts of the indictment pertaining to the year 1946, the propriety of this ruling is not before us. We mention it, however, because of its connection with the following. Appellant told the Court that James Jeffress, the son of Robert Jeffress, was being called as a witness "to give testimony which raises the identical issue which was presented to your Honor in the matter of the testimony of Mrs. Jeffress, with relation to conversation with her late husband." Since at that particular time in the trial the prospective witness was unable to appear, appellant merely made an offer of proof, his counsel stating that he assumed the Court would make the same ruling as in the case of Mrs. Jeffress' testimony. The offer was rejected. In the course of the rather extended offer of proof there was one statement that in 1944 Robert Jeffress had told his son that he owed appellant the sum of \$10,000 for money borrowed in 1943. Appellant now urges that the testimony of James Jeffress would have been admissible to show this fact. It seems clear to us that the offer of proof was at least primarily made to establish the debt of appellant to James Jeffress

at the end of 1946 rather than a debt owed by Jeffress to appellant at the beginning of 1944. Appellant had a duty to make the purpose of his offer of proof clear. Evidence excluded for the only purpose for which it was offered cannot be properly asserted on appeal to be admissible for another purpose theretofore undisclosed. *Flowers v. Bush & Witherspoon Co.*, 254 Fed. 519 (5th Cir. 1918). It is the duty of the party making the offer of proof rather than the Court to separate the various items of evidence embraced in a single offer. *Lane v. United States*, 142 F. 2d 249 (9th Cir. 1944).

Appellant also contends that the Court unduly restricted the cross-examination of witnesses Schriber, Weaver and Brady. The trial court may in the exercise of its sound discretion limit the extent of cross-examination. *Todorow v. United States*, 173 F. 2d 439 (9th Cir. 1949), cert. denied, 337 U.S. 925; *Chevillard v. United States*, 155 F. 2d 929 (9th Cir. 1946). No abuse of discretion appears.

#### V. Instructions to the Jury.

Appellant urges that the trial court failed adequately to instruct the jury on the law applicable to the case in that the charge did not contain certain supplementary instructions which had been proposed by appellant.<sup>16</sup> The instructions given by

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<sup>16</sup>The Government cites *Ziegler v. United States*, 174 F. 2d 439 (9th Cir. 1949), cert. denied, 338 U.S. 822, in contending that there could be no objection to any portion of the charge to the jury until the charge was given and that appellant has accordingly failed to satisfy the requirements of Rule 30,

the Court in the present case are similar in substance to the instructions reviewed in *Barcott v. United States*, 16 F. 2d 929 (9th Cir. 1948), cert. denied, 336 U.S. 912, where we held that the charge fully and fairly presented the law of the case. Upon examination of the instant charge in its entirety, we find that the instructions given fully protected the rights of appellant.

The instructions of the Court as to the net worth method of proving tax evasion and the instructions as to the methods of accounting to be used by a taxpayer were adequate when considered as a whole with the instructions concerning the elements of the

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Federal Rules of Criminal Procedure. The facts in the *Ziegler* case were that the only objection made was at the time requested instructions were exchanged by counsel, and no objection was taken when the Court informed counsel of his proposed charge prior to final jury arguments. In the present case, on the other hand, objection was made by appellant to the instructions at the time provided by the Court, which was after the Court informed counsel of his proposed charge but prior to closing arguments to the jury. Since the record clearly discloses that the Court and counsel for both sides considered the procedure sufficient to satisfy Rule 30, and since the purpose of the rule has been served by giving the trial court opportunity to correct alleged errors in his charge, appellant's objections to the instructions have not been waived. Plain error in instructions should of course be noticed regardless of whether the matter was properly brought to the attention of the trial Court. *Fed. R. Crim. P.* 52(b); see such earlier cases as *Screws v. United States*, 325 U.S. 91, 107 (1945); *Morris v. United States*, 156 F. 2d 525, 527 (9th Cir. 1946).



crime, the Government's burden of proof, and other basic principles of criminal law applicable to this case.

The jury was also properly instructed as to the test for determining the validity of a partnership for federal income tax purposes. The instruction requested by appellant, requiring the jury to find a valid partnership if certain testimony was believed, unduly emphasized particular phases of the evidence and would violate the rule that the question is one of fact to be decided from all the evidence.

Appellant was not entitled to an instruction as to a possible inference to be drawn from the Government's failure to introduce in evidence all of appellant's business records in its possession. The records were originally prepared by appellant's business associates, were accessible to appellant prior to trial, and were at least surveyed by his accountants subsequent to the commencement of the Government's investigation of appellant's income tax liability. As we have previously noted, if any specific records had been thought beneficial to his case, appellant could have requested their production.

#### VI. Fair Trial.

After the jury had returned its verdict, appellant moved for a new trial. The only new proposition asserted was that appellant had been substantially prejudiced and deprived of a fair trial by reason of certain conduct on the part of the jury, the



Court, the prosecuting attorneys, and agents of the Federal Bureau of Investigation. Appellant's counsel averred in a supporting affidavit that the following facts were learned by them subsequent to the verdict of the jury: that in the early stages of the trial one of the jurors had been told by a person unknown to appellant's counsel that the juror could profit by bringing in a verdict favorable to appellant; that the juror thereupon reported this conversation to the trial judge; that the trial judge discussed the matter with the prosecuting attorneys, but did not at any time inform appellant's counsel of the incident; and that the Federal Bureau of Investigation was notified, conducted an investigation, and made a report to the trial judge. It is appellant's contention that the juror to whom the remark had been made would be apprehensive of being suspected of taking a bribe if he voted for a verdict in favor of appellant, and would therefore be prejudiced against appellant. The motion for a new trial requested the opportunity for a hearing to adduce evidence concerning the various conversations among the juror to whom the remark had been made, the trial court, and agents of the Federal Bureau of Investigation "in order to fully investigate the same to determine to what extent it had any effect upon the jury and was prejudicial to the defendant."

The District Court in denying the motion did not abuse its broad power to grant or deny motions of this type, since there was a failure on the part of appellant to show prejudice. The very newspaper articles upon which appellant relies, and which were

made a part of his motion, disclose that the juror believed the statement had been made to him in jest and only notified the trial judge because of his admonitions not to discuss the case. The judge also believed the statement had not been made seriously, but took the precaution of requesting an investigation by the Federal Bureau of Investigation, which in fact substantiated his belief that the remark had been made in jest. These circumstances do not indicate prejudice to appellant. It is obvious that if in fact an attempt had been made by persons associated with the defense to bribe a juror disclosure of the planned investigation would have greatly decreased the likelihood that such investigation would be successful. Appellant relied solely upon the affidavit of defense counsel stating what counsel had learned through the newspapers. If any jurors had received communications from the trial court or the Federal Bureau of Investigation of a nature which would tend to prejudice them against appellant, or had been subjected to other extraneous influences, such fact could have been appropriately presented by submitting affidavits of the jurors themselves. See, for example, *Clyde Mattox v. United States*, 146 U.S. 140 (1892).

Judgment affirmed.

[Endorsed]: Opinion. Filed May 28, 1953. Paul P. O'Brien, Clerk.

United States Court of Appeals  
for the Ninth Circuit

No. 13281

ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

## JUDGMENT

Appeal from the United States District Court for the District of Nevada.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Nevada and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered May 28, 1953.

United States Court of Appeals  
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Tuesday, June 30,  
1953.

Before: Mathews, Stephens and Orr,  
Circuit Judges.

ORDER DENYING PETITION FOR REHEAR-  
ING, REHEARING EN BANC AND STAY-  
ING MANDATE

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, filed June 26, 1953, and within time allowed therefor by rule of court, for a rehearing and a rehearing en banc, be, and hereby is denied.

It Is Further Ordered that the issuance, under Rule 28 of the mandate of this Court in the above cause be, and hereby is stayed pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari to be made by the appellant herein, providing such petition is filed in the clerk's office of the Supreme Court of the United States on or before July 30, 1953. In the event the petition for writ of certiorari is granted, then this stay is to continue pending the final disposition of the case by the Supreme Court of the United States.

United States Court of Appeals  
for the Ninth Circuit

CERTIFICATE OF CLERK, U. S. COURT OF  
APPEALS FOR THE NINTH CIRCUIT,  
TO RECORD CERTIFIED UNDER RULE  
38 OF THE REVISED RULES OF THE  
SUPREME COURT OF THE UNITED  
STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing 3779 pages, numbered from and including 1 to and including 3779, to be a full, true and correct copy of the entire record excluding original exhibits, of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this .. day of July, 1953.

[Seal]

PAUL P. O'BRIEN,  
Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. —

ELMER F. REMMER, Petitioner,

vs.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF  
CERTIORARI—Filed July 17, 1953

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 29, 1953.

Tom C. Clark, Associate Justice of the Supreme Court of the United States.

Dated this 17th day of July, 1953.

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[File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 304

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 16, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

(1828)